Dec 19 — Postponed. Adv
Postponed till 19-24 Judge Davis —
1st Conference after recess
submitted

Reversed Story — Judge Davis delivered —

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 620.

GEORGE NUGENT, PLAINTIFF IN ERROR,

vs.

THE BOARD OF SUPERVISORS OF PUTNAM COUNTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 30, 1873.

Reversed
Story J.
wrote

Oct 1873

SUPREME COURT OF THE UNITED STATES.

No. 620.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for said district, on Monday, the eighteenth day of August, in the July term, A. D. eighteen hundred and seventy-three, of said court, and of our Independence the ninety-eighth year.

WILLIAM H. BRADLEY, *Clerk.*

GEORGE NUGENT
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the second day of December, A. D. 1872, came George Nugent, plaintiff, by his attorneys, and filed in the
2 office of the clerk of the circuit court of the United States for said northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons against The Board of Supervisors of Putnam County, defendant, to which præcipe was attached a bond for costs in said entitled cause, which said præcipe and bond are in the words and figures following, to wit:

Præcipe.

United States circuit court, seventh circuit, northern district of Illinois, December term, A. D. 1872.

GEORGE NUGENT, A CITIZEN OF THE COMMONWEALTH of Pennsylvania,
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County, Illinois. } Assumpsit. Damages $10,000.00.

Please issue summons in above-entitled cause, returnable as above to clerk of said court.

MARK BANGS,
Att'y for Plaintiff.

3 I hereby enter myself security for costs in the above-entitled cause, and bind myself to pay, or cause to be paid, all costs which shall accrue in the same, either to the opposite party or to any of the officers of said court in pursuance of law.

Dated December 2, 1872.

THOMAS M. SHAW.

(Endorsed:) Filed Dec. 2d, 1872. W'm H. Bradley, cl'k.

On the same day, to wit, the 2d day of December, A. D. 1872, a summons issued out of said clerk's office in said entitled cause, which said writ, together with the return of the marshal thereon, is in words and figures following, to wit:

Summons.

Circuit court of the United States of America, northern district of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon The Board of Supervisors of Putnam County, Illinois, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December instant, to answer unto George Nugent of a plea of trespass on the case upon promises to his damage, as he alleges, of ten thousand dollars, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this second day of December, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the 97th year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

I served the within writ upon the Board of Supervisors of Putnam County, Illinois, therein named, by reading the same to Amos T. Purviance, clerk of said board, and also by delivering to him, the said clerk, a true copy thereof on the 4th day of December, A. D. 1872.

B. H. CAMPBELL,
U. S. Marshal.
By L. O. GILMAN, *Deputy.*

(Endorsed:) Filed Dec. 7th, A. D. 1872. W'm H. Bradley, clerk.

Afterwards, to wit, on the 6th day of December, A. D. 1872, said plaintiff, by his attorney, filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

STATE OF ILLINOIS, *Cook County, ss:*

United States circuit court, seventh circuit, northern district of Illinois, December term, A. D. 1872.

George Nugent, the plaintiff in this suit, who is a citizen of the Commonwealth of Pennsylvania, complains of The Board of Supervisors of Putnam County, in the State of Illinois, a municipal corporation organized and existing under the general laws of said State, defendants, for that whereas the said defendant heretofore, to wit, on the 25th day of October, A. D. 1870, at said Putnam County, by A. T. Purviance, the county clerk of said county, signed and caused to be issued and delivered to the Plymouth, Kankakee and Pacific Railroad Co. the twenty-five coupons of the said county, in letters and figures respectively as follows, to wit:

$100.] The county of Putnam, State of Illinois, will pay
hereof one hundred dollars on the 25th day of October,
the Fourth Nat'l Bank, New York, being interest due on
A. T. PURV
No. 76.]

7 $100.] The county of Putnam, State of I
bearer hereof one hundred dollars on the
A. D. 1872, at the Fourth Nat'l Bank, New Yor
railroad bond. A.
No. 77.]

$100.] The county of Putnam, State o
hereof one hundred dollars on the 25th
the Fourth Nat'l Bank, New York, h
bond.
No. 78.]

$100.] The county of Putnam, St
one hundred dollars on the 25th
Fourth Nat'l Bank, New York, b
No. 79.]

$100.] The county of Putn.
hereof one hundred dollars
the Fourth Nat'l Bank, New
No. 80.]

8 $100.] The count
bearer hereof one
A. D. 1872, at the Four
railroad bond.
No. 81.]

$100.] The county
hereof one hundred
the Fourth Nat'l Ba
No. 82.]

$100.] The coun
hereof one hundr
the Fourth Nat'l
No. 83.]

$100.] The c
hereof one hu
the Fourth N
No. 84.]

The county of Putnam, State of Illinois, will pay the
hereof one hundred dollars on the 25th day of October,
the Fourth Nat'l Bank, New York, being interest due

A. T. PURVIANCE,
County Clerk.

of Putnam, State of Illinois, will pay the bearer
dollars on the 25th day of October, A. D. 1872, at
New York, being interest due on railroad bond.
A. T. PURVIANCE,
County Clerk.

am, State of Illinois, will pay the bearer
n the 25th day of October, A. D. 1872, at
rk, being interest due on railroad bond.
A. T. PURVIANCE,
County Clerk.

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25th day of October, A. D. 1872, at
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A. T. PURVIANCE,
County Clerk.

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A. T. PURVIANCE,
County Clerk.

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County Clerk.

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$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 25th day of October, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 94.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 25th day of October, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 95.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 25th day of October, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 96.] A. T. PURVIANCE,
County Clerk.

12 $100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 25th day of October, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 97.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 25th day of October, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 98.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 25th day of October, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 99.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 25th day of October, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 100.] A. T. PURVIANCE,
County Clerk.

13 And the plaintiff avers that the said coupons were attached to the said bonds therein referred to, and numbered in the margin at the end thereof, and were for the interest upon the said bonds from the 25th day of October, A. D. 1871, for one year thereafter, at the rate of ten per cent. per annum, each of said bonds being for the sum of one thousand dollars, and none of the same coming due until long after the 25th day of October, A. D. 1872. And the said bonds, and coupons so attached, the said bonds being also signed by the said county clerk and by the chairman of the board of supervisors of said county, and under the seal of the county, were then and there, to wit, on the 25th day of

October, A. D. 1870, at said county, delivered to the Plymouth, Kankakee and Pacific Railroad Co.; and the said railroad company, afterwards, to wit, on the first day of January, A. D. 1871, for value received, transferred, sold, and delivered the same to the American Life Insurance Company for value paid therefor, and the said insurance company then and there transferred and delivered the said coupons sued upon to the plaintiff, who is now the legal holder and owner thereof, for value paid therefor.

And the plaintiff avers that the said bonds were issued in part payment of one hundred thousand dollars stock, before that time subscribed by the said county of Putnam to the said capital stock of the
14 Kankakee and Illinois River Railroad Company, which company had before the issuance of said bonds become legally consolidated with the Plymouth, Kankakee and Pacific Railroad Company, under the name of the Plymouth, Kankakee and Pacific Railroad Company, such consolidation being authorized by the charter of the said Kankakee and Illinois River Railroad Co. at the time the said county of Putnam subscribed said stock, and at the time the propositions to subscribe the same were submitted to a vote of the legal voters of said county as required by law, and such consolidation was made and effected as well in conformity to the general laws of Illinois in force at the time the voters of said county voted for the subscription to the stock of the Kankakee and Illinois River Railroad Co., as in pursuance of the said charter, which provision in said charter was as follows:

Act approved Ap. 15, 1869.

SEC. 11. It shall be lawful for said company, and they shall have power to unite or consolidate its railroad with any other railroad or railroads now constructed, or being constructed, or which may hereafter be constructed within this State, or any other State which may cross or intersect the same, or be built along the line thereof, upon such terms as may be mutually agreed upon between said company, or any other company. And for said purpose, full power is hereby given said
15 company to make and execute such contracts with any other company or companies as will secure the object of such connections or consolidations.

And the said board of supervisors consented to such consolidation, and voted in favour thereof, as a stockholder in the Kankakee and Illinois River Railroad Company, at an election held for the purpose of taking a vote of the stockholders of said company on the question of such consolidation.

And the plaintiff avers that before the said board of supervisors subscribed the said sum of one hundred thousand dollars to the capital stock of said railroad company, or any part thereof, the said board was duly authorized so to do by a vote of a majority of the legal voters of said county, taking as a basis the number of votes polled at the then last preceding general election held in said county at elections ordered by the said board for that purpose, and duly held under the general laws of said State.

And the plaintiff avers that before the signing of said bonds and coupons by said clerk and chairman, they were duly authorized and appointed by resolution of said board to sign and deliver the same
16 in manner and form as the same was done.

And the plaintiff avers that on, to wit, the 29th day of November

A. D. 1872, and before the commencement of this suit, he presented said coupons to the county treasurer of said county, at his office in said county, and demanded payment of each and every of them, which was then and there refused by him. And the said coupons were also, after due, and before the commencement of this suit, to wit, on the 26th day of October, A. D. 1872, duly presented for payment at the Fourth National Bank in New York, and payment thereof refused. And the same, and each of them, though long since due and payable according to the tenor and effect thereof, remain wholly unpaid.

2ND. And also for that whereas the said defendants heretofore, to wit, on the first day of April, A. D. 1871, at said Putnam County, by A. T. Purviance, county clerk of the said county, signed, and caused to be issued and delivered to the Plymouth, Kankakee and Pacific Railroad Company the twelve coupons of the said county, in letter and figures, respectively, as follows, to wit:

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 1.] (1872.) A. T. PURVIANCE,
County Clerk.

17 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 2.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 3.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 4.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 5] (1872.) A. T. PURVIANCE.
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 6.] (1872.) A. T. PURVIANCE,
County Clerk.

18 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Ap'r., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 7.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 8.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 9.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 10.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putman, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 11.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on 1st day of Apr., 1872, at the Fourth
19 Nat'l Bank, New York, being interest due on railroad bond.
No. 12.] (1872.) A. T. PURVIANCE,
County Clerk.

And the plaintiff avers that the said coupons were attached to the said bonds therein referred to, and numbered in the margin at the end thereof, and were for the interest upon the said bonds from the first day of April, A. D. 1871, for one year thereafter, at the rate of ten per cent. per annum, each of said bonds being for the sum of one thousand dollars, and none of the same coming due until long after the first day of April, A. D. 1872; and the said bonds and coupons so attached, the said bonds being signed by said county clerk and chairman of said board, and under the seal of the county, were then and there, to wit, on the first day of April, A. D. 1871, at said county, delivered to the Plymouth,
20 Kankakee and Pacific Railroad Co., and the said railroad company afterwards, to wit, on the day and year aforesaid, for value received, sold and delivered the same to the plaintiff, who is now the legal holder and owner thereof, for value paid therefor.

And the plaintiff avers that the said bonds were issued in part payment of one hundred thousand dollars stock, before that time subscribed by the said county of Putnam to the capital stock of the Kankakee and Illinois River Railroad Co., which company had before the issuance of said bonds become consolidated with the Plymouth, Kankakee and Pacific Railroad Co., under the name of the Plymouth, Kankakee and Pacific Railroad Co., such consolidation being authorized by the charter of the said Kankakee and Illinois River Railroad Co., at the time the said county of Putnam subscribed said stock and at the time the propositions to subscribe the same were submitted to a vote of the legal voters of said county as required by law. And the said board of supervisors consented to such consolidation, and voted in favour thereof, as a

stockholder in the Kankakee and Illinois River Railroad Co., at an election held for the purpose of taking a vote of the stockholders of said company on the question of such consolidation.

21 And the plaintiff avers that, before the said board of supervisors subscribed the said sum of one hundred thousand dollars to the capital stock of said railroad company, or any part thereof, the said board was duly authorized so to do by a vote of a majority of the legal voters of said county, taking as a basis the number of votes polled at the last three preceding general elections held in said county at elections ordered by said board for that purpose, and duly held under the general laws of said State.

And the plaintiff avers that, before the signing of said bonds and coupons by said county clerk of said Putnam County, and of the bonds by the chairman of said board, they were duly authorized and appointed by resolution of said board to sign and deliver the same in manner and form as the same was done.

And the plaintiff avers that, before the commencement of this suit, to wit, on the 29th day of November, A. D. 1872, he presented said coupons to the county treasurer of said county at his office in said county, and demanded payment of each and every of said coupons, which was

22 then and there by him refused. And the same, and each of them, though long since due and payable according to the tenor and effect thereof, remain wholly unpaid.

3rd. And also for that whereas the said defendant heretofore, to wit, on the first day of April, A. D. 1871, at said county of Putnam, by A. T. Purviance, county clerk of said county, signed and caused to be issued and delivered to the Plymouth, Kankakee and Pacific Railroad Co. the thirteen coupons of said county in letters and figures as follows, to wit:

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 13.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 14.] (1872.) A. T. PURVIANCE,
County Clerk.

23 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 15.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 16.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer

hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 17.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 18.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 19.] (1872.) A. T. PURVIANCE,
County Clerk.

24 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 20.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 21.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 22.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 23.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 24.] (1872.) A. T. PURVIANCE,
County Clerk.

25 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 25.] (1872.) A. T. PURVIANCE,
County Clerk.

And the plaintiff avers that the said coupons were attached to the said bonds therein referred to, and numbered in the margin at the end

thereof, and were for the interest upon the said bonds from the first day of April, A. D. 1871, for one year thereafter, at the rate of ten per cent. per annum, each of said bonds being for the sum of one thousand dollars, and none of the same coming due until long after the first day of April, A. D. 1872.

And the said bonds and coupons so attached, the said bonds being signed by said county clerk and by the chairman of the board of supervisors of said county, and under the seal of the county, were then and there, to wit, on the first day of April, A. D. 1871, at said county, delivered to the Plymouth, Kankakee and Pacific Railroad Co., and the railroad company afterwards, to wit, on the day and year aforesaid, for value received, sold and delivered the same to the plaintiff, who is now the legal holder and owner thereof for value paid therefor.

And the plaintiff avers that the said bonds were issued in part
26 payment of one hundred thousand dollars stock before that time subscribed by the said county of Putnam to the capital stock of the Kankakee and Illinois River Railroad Co., which company had, before the issuance of said bonds, become consolidated with the Plymouth, Kankakee and Pacific Railroad Co., under the name of the Plymouth, Kankakee and Pacific Railroad Co., such consolidation being authorized by the charter of the said Kankakee and Illinois River Railroad Co., at the time the said county of Putnam subscribed said stock, and at the time the propositions to subscribe the same were submitted to a vote of the legal voters of said county as organized by law. And the said board of supervisors consented to such consolidation, and voted in favour thereof as a stockholder in the Kankakee and Illinois River Railroad Co., at an election held for the purpose of taking a vote of the stockholders of said company on the question of such consolidation.

And the plaintiff avers that before the said board of supervisors subscribed the said sum of one hundred thousand dollars to the capital stock of said railroad company or any part thereof, the said board was duly authorized so to do by a vote of a majority of the legal voters of said county, taking as a basis the number of votes polled at the
27 last then preceding general election held in said county, at elections ordered by said board for that purpose, and duly held under the general laws of said State.

And the plaintiff avers that, before the signing of said bonds and coupons by said county clerk of said Putnam County, and of the bonds by said chairman, they were duly authorized and appointed by resolution of said board to sign and deliver the same in manner and form as same was done.

And the plaintiff avers that, before the commencement of this suit, to wit, on the 29th day of November, A. D. 1872, he presented said coupons to the county treasurer of said county, at his office in said county, and demanded payment of each and every of said coupons, which was then and there by him refused; and the same, and each of them, though long since due and payable, according to the tenor and effect thereof, remain wholly unpaid.

4th. And also for that whereas the defendant on the first day of July, A. D. 1871, at said Putnam County, by A. T. Purviance, county clerk of said county, signed and caused to be issued and delivered to the Plymouth, Kankakee and Pacific Railroad Co. the fifteen coupons
28 of the said county, in letters and figures respectively as follows, to wit:

$100.] The county of Putnam, State of Illinois, will pay the bearer

hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 26.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 27.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 28.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 29.] A. T. PURVIANCE,
County Clerk.

29 $100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 30.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 31.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 32.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 33.] A. T. PURVIANCE,
County Clerk.

30 $100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due rail-road bond.
No. 34.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer

hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 35.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York being interest due on railroad bond.
No. 36.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 37.] A. T. PURVIANCE,
County Clerk.

31 $100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 38.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 39.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 1st day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 40.] A. T. PURNIANCE,
County Clerk.

And the plaintiff avers that the said coupons were attached to the said bonds therein referred to, and numbered in the margin at the end thereof; and were for the interest upon the said bonds from the 1st day of July, A. D. 1871, for one year thereafter, at the rate of ten per cent. per annum, each of said bonds being for the sum of one thousand dollars, and none of the same coming due until long after the 1st day
32 of July, A. D. 1872. And the said bonds and coupons so attached, the said bonds being also signed by the said county clerk, and by the chairman of said board, and under the seal of the county, were then and there, to wit, on the 1st day of July, A. D. 1871, at said county, delivered to the Plymouth, Kankakee and Pacific Railroad Co.; and the said railroad company afterwards, to wit, on the day of , A. D. 187 , for value received, transferred, sold, and delivered the same to the plaintiff, who is now the legal holder and owner thereof for value paid therefor.

And the plaintiff avers that the said bonds were issued in part payment of one hundred thousand dollars stock, before that time subscribed by the said county of Putnam to the capital stock of the Kankakee and Illinois River Railroad Company, which company had, before the issuance of said bonds, become consolidated with the Plymouth, Kankakee

and Pacific Railroad Company, under the name of the Plymouth, Kankakee and Pacific Railroad Company, such consolidation being authorized by the charter of the said Kankakee and Illinois River Railroad Co. At the time the said county of Putnam subscribed said stock, and at the time the proposition to subscribe, the same were submitted to a vote of the legal voters of said county, as required by law. And
33 the said board of supervisors consented to such consolidation and voted in favor thereof as a stockholder in the Kankakee and Illinois Railroad Company, at an election held for the purpose of taking a vote of the stockholders of said company on the question of such consolidation.

And the plaintiff avers that before the said board of supervisors subscribed the said sum of one hundred thousand dollars to the capital stock of said railroad company, or any part thereof, the said board was duly authorized so to do by a vote of a majority of the legal voters of said county, taking as a basis the number of votes polled at the then last preceding general election held in said county, at election ordered by the said board for that purpose and duly held under the general laws of said State.

And the plaintiff avers that before the signing of said bonds and coupons by said clerk, and of the bonds by said chairman, they were duly authorized and appointed by resolution of said board to sign and deliver the same in manner and form as the same was done.

And the plaintiff avers that on, to wit, the 29th day of November, A. D. 1872, and before the commencement of this suit, he presented said coupons to the county treasurer of said county, at his office in
34 said county, and demanded payment of each and every of them, which was then and there refused by him; and the same and each of them, although long since due and payable, according to the tenor and effect thereof, remains wholly unpaid.

5th. And also for that whereas the said defendant heretofore, to wit, on the 15th day July, A. D. 1871, at said county of Putnam, by A. T. Purviance, county clerk of the said county, signed and caused to be issued and delivered to the Plymouth, Kankakee and Pacific Railroad Co., the ten (10) coupons of the said county, in letters and figures as follows, to wit:

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 41.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 42.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 43.] (1872.) A. T. PURVIANCE,
County Clerk.

35 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 44.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 45.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 46.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 47.] (1872.) A. T. PURVIANCE,
County Clerk.

36 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 48.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 49.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 15th day of July, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 50.] (1872.) A. T. PURVIANCE,
County Clerk.

And the plaintiff avers that the said coupons were attached to the said bonds therein referred to, and numbered in the margin at the end thereof, and were for the interest upon the said bonds from the 15th day of July, 1871, for one year thereafter, at the rate of ten per cent. per annum, each of said bonds being for the sum of one thousand dollars, and none of the same coming due until long after the 15th day of July, A. D. 1872, and the said bonds and coupons so attached, the said bonds being signed by the said county clerk, and said
37 bonds by the chairman of the said board, and under the seal of the county, were then and there, to wit, on the 15th day of July, A. D. 1871, at said county, delivered to the Plymouth, Kankakee and Pacific Railroad Co. And the said railroad company afterwards, to wit,

on the day and year aforesaid, for value received, sold and delivered the same to the plaintiff, who is now the legal holder and owner thereof, for value paid therefor.

And the plaintiff avers that the said bonds were issued in part payment of one hundred thousand dollars stock, before that time subscribed by the said county of Putnam to the capital stock of the Kankakee and Illinois River Railroad Co., which company had, before the issuance of such bonds, become consolidated with the Plymouth, Kankakee and Pacific Railroad Co. under the name of the Plymouth, Kankakee and Pacific Railroad Co., such consolidation being authorized by the charter of the said Kankakee and Illinois River Railroad Co., at the time the said county of Putnam subscribed said stock, and at the time the propositions to subscribe the same were submitted to a vote of the legal voters of said county, as required by law. And the said board of supervisors consented to such consolidation, and voted in favor thereof as a stockholder in the Kankakee and Illinois River Railroad Co.,
38 at an election held for the purpose of taking a vote of the stockholders of said company on the question of such consolidation.

And the plaintiff avers that before the said board of supervisors subscribed the said sum of one hundred thousand dollars to the capital stock of said railroad company, or any part thereof, the said board was duly authorized so to do by a vote of a majority of the legal voters of said county, taking as a basis the number of votes polled at the last then preceding general election, held in said county, at elections ordered by said board for that purpose, and duly held under the general law of said State.

And the plaintiff avers that before the signing of said bonds and coupons by said county clerk of said Putnam County, and of the bonds by the said chairman, they were duly authorized and appointed to sign and deliver the same in manner and form as the same was done.

And the plaintiff avers that before the commencement of this suit, to wit, on the 29th day of November, A. D. 1872, he presented said coupons to the county treasurer of said county, at his office in said county, and demanded payment of each and every of said coupons, which was then and there by him refused. And the same and each of them,
39 though long since due and payable, according to the tenor and effect thereof, remained wholly unpaid.

6. And, also, for that whereas the defendant, on the 15th day of September, A. D. 1871, at said Putnam county, by A. T. Purviance, county clerk of said county, signed and caused to be issued and delivered to the Plymouth, Kankakee and Pacific Railroad Company the fifteen coupons of the said county, in letters and figures respectively, as follows, to wit:

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 51.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 52.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 53.] A. T. PURVIANCE,
County Clerk.

40 $100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 54.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 55.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 56.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 57.] A. T. PURVIANCE,
County Clerk.

41 $100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 58.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 59.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.

No. 60.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 61.] A. T. PURVIANCE,
County Clerk.

42 $100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 62.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 63.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 64.] A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay the bearer hereof one hundred dollars on the 15th day of September, A. D. 1872, at the Fourth Nat'l Bank, being interest due on railroad bond.
No. 65.] A. T. PURVIANCE,
County Clerk.

And the plaintiff avers that the said coupons were attached to the said bonds therein referred to, and numbered in the margin at the end thereof, and were for the interest upon the said from the
43 15th day of September, A. D. 1871, for one year thereafter, at the rate of ten per cent. per annum, each of said bonds being for the sum one thousand dollars, and none of them coming due until long after the 15th day of September, A. D. 1872. And the said bonds and coupons so attached, the said bonds being also signed by the said county clerk and the bonds by the chairman of said board, and under the seal of the county, were then and there, to wit, on the 15th day of September, A. D. 1871, at said county, delivered to the Plymouth, Kankakee and Pacific Railroad Co. And the said railroad company, afterwards, to wit, on the first day of January, A. D. 1871, for value received, transferred, sold, and delivered the same to the plaintiff, who is now the legal holder and owner thereof for value paid therefor.

And the plaintiff avers that the said bonds were issued in part payment of one hundred thousand dollars stock, before that time subscribed by the said county of Putnam to the capital stock of the Kankakee and Illinois River Railroad Company; which company had, before the issuance of said bonds, become consolidated with the Plymouth, Kankakee and Pacific Railroad Company, under the name of the Plymouth, Kankakee and Pacific Railroad Company; such consolidation being author-

ized by the charter of the said Kankakee and Illinois River Rail-
44 road Company at the time the said county of Putnam subscribed said stock, and at the time the propositions to subscribe the same were submitted to a vote of the legal voters of said county, as required by law, and the said board of supervisors consented to such consolidation, and voted in favour thereof as a stockholder in the Kankakee and Illinois River Railroad Company, at an election held for the purpose of taking a vote of the stockholders of said company on the question of such consolidation.

And the plaintiff avers that before the said board of supervisors subscribed the said sum of one hundred thousand dollars to the capital stock of said railroad company, or any part thereof, the said board was duly authorized so to do by a vote of a majority of the legal voters of said county, taking as a basis the number of votes polled at the then last preceding general election held in said county, at elections ordered by the said board for that purpose and duly held under the general laws of said State.

And the plaintiff avers that before the signing of said bonds and coupons by said clerk, and of the bonds by said chairman, they were duly authorized and appointed by resolution of said board to sign
45 and deliver the same in manner and form as the same was done.

And the plaintiff avers that on, to wit, the 29th day of November, A. D. 1872, and before the commencement of this suit, he presented said coupons to the county treasurer of said county, at his office in said county, and demanded payment of each and every of them, which was then and there refused by him, and the same and each of them, although long since due and payable according to the tenor and effect thereof, remain wholly unpaid.

7th. And also for that, whereas the said defendant, heretofore, to wit, on the first day of April, A. D. 1871, at said Putnam County, by A. T. Purviance, county clerk of the said county, signed and caused to be issued and delivered to the Plymouth, Kankakee and Pacific Railroad Company the twelve coupons of the said county, in letters and figures, respectively, as follows, to wit:

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 1.] (1872.) A. T. PURVIANCE,
County Clerk.

46 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 2.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 3.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer

hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 4.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 5.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 6.] (1872.) A. T. PURVIANCE,
County Clerk.

47 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 7.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 8.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 9.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 10.] (1872.) A. T. PURVIANCE,
County Clerk.

$100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 11.] (1872.) A. T. PURVIANCE,
County Clerk.

48 $100.] The county of Putnam, State of Illinois, will pay to the bearer hereof one hundred dollars on the 1st day of Apr., 1872, at the Fourth Nat'l Bank, New York, being interest due on railroad bond.
No. 12.] (1872.) A. T. PURVIANCE,
County Clerk.

And the plaintiff avers that the said coupons were attached to the said bonds therein referred to, and numbered in the margin at the end thereof, and were for the interest upon the said bonds from the 1st day of April, A. D. 1871, for one year thereafter, at the rate of ten per cent. per annum, each of said bonds being for the sum of one thousand dollars, and none of the same coming due until long after the first day of April, A. D. 1872, and the said bonds were signed by the chairman of the said board, and under the seal of said county and by said clerk, and coupons so attached were signed by the said county clerk were then and there, to wit, on the first day of April, A. D. 1871, at said county, delivered to the Plymouth, Kankakee and Pacific Railroad Co., and the said railroad company afterwards, to wit, on the day and year aforesaid, for value received, sold and delivered the same to the plaintiff, who is now the legal holder and owner thereof for value paid therefor.

49 And the plaintiff avers that the said bonds were issued in part payment of one hundred thousand dollars stock, before that time subscribed by the said county of Putnam to the capital stock of the Kankakee and Illinois River Railroad Co., which company had, before the issuance of said bonds, become consolidated with the Plymouth, Kankakee and Pacific Railroad Co., under the name of the Plymouth, Kankakee and Pacific Railroad Co., such consolidation being authorized by the charter of the said Kankakee and Illinois River Railroad Co. at the time the said county of Putnam subscribed said stock, and at the time the propositions to subscribe the same were submitted to a vote of the legal voters of said county as required by law. And the said board of supervisors consented to such consolidation and voted in favour thereof as a stockholder in the Kankakee and Illinois River Railroad Co. at an election held for the purpose of taking a vote of the stockholders of said company on the question of such consolidation.

And the plaintiff avers that before the said board of supervisors subscribed the same sum of one hundred thousand dollars to the capital

50 stock of said railroad company, or any part thereof, the said board was duly authorized so to do by a vote of a majority of the legal voters of said county, taking as a basis the number of votes polled at the last then preceding general election held in said county, at elections ordered by said board for that purpose, and duly held under the general laws of said State.

And the plaintiff avers that before the signing of said bonds by said chairman he was duly authorized and appointed so to do by resolution of the said board, and to deliver the same; and in like manner, before the signing of the said bonds and coupons by said clerk, he was duly authorized and appointed so to do by resolution of the said board.

And the plaintiff avers that before the commencement of this suit, to wit, on the 29th day of November, A. D. 1872, he presented said coupons to the county treasurer of said county, at his office in said county, and demanded payment of each and every of said coupons, which was then and there by him refused; and the same and each of them, though long since due and payable according to the tenor and effect thereof, remain wholly unpaid

And also for that, whereas the defendant heretofore, to wit, on the 29th day of November, A. D. 1872, at said county, became and was in-

51 debted unto the plaintiff in a large sum of money, to wit, ten thousand dollars, for so much money then and there loaned by the plaintiff to the defendant at the request of the defendant.

And in the further sum of ten thousand dollars, for so much money then and there laid out and expended by the plaintiff to and for the use of the defendant at the request of the defendant.

And in the further sum of ten thousand dollars, for so much money then and there had and received by the defendant to and for the use of the plaintiff.

And in the further sum of ten thousand dollars, for so much money then due and owing from the defendant to the plaintiff, for interest upon and for the forbearance of divers large sums of money before then due and owing from the defendant to the plaintiff, and by the plaintiff forborne to the defendant, for divers long spaces of time before then elapsed, at the request of the defendant.

And being so indebted, and in consideration thereof, the defendant afterwards, to wit, on the day and year last aforesaid, at said county, undertook and then and there promised the plaintiff to pay him
52 the said several sums of money, respectively, on request.

Yet the defendant, though often requested, hath not paid the said several sums of money mentioned in the said several coupons mentioned, nor any nor either of them, nor any part thereof, but hath hitherto failed and refused so to do, to the damage of plaintiff ten thousand dollars.

Hence this suit.

MARK BANGS,
Attorney for Plaintiff.

For copy of instruments sued on, see body of declaration, where the same are set out in hac verba.

MARK BANGS,
Attorney for Plaintiff.

(Endorsed:) Filed Dec. 6, 1872. W'm H. Bradley, cl'k.

53 Afterwards, to wit, on the 16th day of December, in the December term, A. D. 1872, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Time to plead extended.

GEORGE NUGENT
v.
THE BOARD OF SUPERVISERS OF PUTNAM County, Illinois. } Assumpsit.

On motion of the defendant, by its attorney, the time is extended until the first Monday of January next to plead herein.

Afterwards, to wit, on the 6th day of January, A. D. 1873, said defendant, by its attorney, filed in said clerk's office its demurrer to first seven counts of the declaration, with its plea to the 8th count of said declaration thereto attached, in said entitle dcause, which said demurrer and plea are in the words and figures following, to wit:

54 *Demurrer, &c., & plea.*

State of Illinois & circuit court of the United States for the northern district of Illinois.

THE BOARD OF SUPERVISORS OF PUTNAM County, in the State of Illinois, defendant, *ats.* GEORGE NUGENT, PLAINTIFF. } Action of assumpsit.

And now comes the said defendant, by T. Lyle Dickey, the attorney at law of certain tax-payers & residents of said county, and as to the 1st, 2nd, 3d, 4th, 5th, 6th, & 7th counts in said plaintiff's declaration respectively, defendant says actio non, because, he says, as to each of said counts respectively, that each of said counts &c., the matters in each of them respectively alleged, in manner & form as the same are set forth in each of said counts respectively, are not sufficient in law for said plaintiff to have and maintain his aforesaid action, & that defendant is not bound by to answer the same, & this defendant is ready to verify. Wherefore, &c.

55 T. LYLE DICKEY,
for Defendant.

And said defendant states & shows to the court here its following causes of demurrer to each of said counts respectively, that is to say:

1st. For that the said counts & each of them respectively fail to state in apt terms any lawful consideration upon which said coupons were made. The county had no lawful power to make or issue any promissory note, coupon, or other commercial or negotiable paper.

2nd. It is not alleged or shown in apt terms in said counts respectively, & in each of them, that said coupons were made upon a valuable consideration.

3rd. The plaintiff does not set out in apt terms in substance or in haec verba the bonds mentioned in said counts respectively, & does not show to whom the bonds were payable on their face, nor does he show that said bonds on their face bore interest, nor at what rate, if any interest on said bonds was by the terms thereof, nor what, if any,
56 were the terms & conditions of said bonds on their face, nor who were the contracting parties thereto, nor even that the bonds were executed by the county, nor when said bonds are payable, nor whether said bonds are for the payment of money only or otherwise.

4th. No proper basis is shown in said counts respectively for the lawful issue of said bonds; it is not alleged that the stock (in part payment for which, it is said, said were issued) was ever issued or delivered to said county, or that the P., K. & P. R. R. Co. (to whom said bonds are said to have been delivered) ever owned or possessed any of the stock of the Kankakee & Ill. River R. R. Co., or was ready & able to deliver the same to said county.

5th. It is not distinctly alleged in apt words that any proposition to subscribe such stock was ever lawfully submitted to a vote in said county, nor the jurisdictional facts alleged in apt terms which by law were necessary to the validity of the alleged action of the voters & necessary to the validity & binding force of the supposed action of the
57 said board of supervisors & county officers, nor is it alleged that the proposition to issue bonds of the county in payment for said stock was ever submitted in a lawful manner to the voters of said county or voted upon by them; & especially it is not shown that any proposition to issue coupon-bonds for such a purpose, nor does the law anywhere authorize the county to issue coupon bonds.

6th. It is not affirmatively how the supposed stock was subscribed

by the county, or by what action the county became a stockholder, or that the county became in fact a stockholder before the alleged consolidation. The board can only act by resolution or by an agent specially empowered by resolution to act for the county.

7th. The charter of the Kan. & Pacific R. R. Co. is a public act, and does not authorize the alleged consolidation.

8th. The cause of action, if any, is the basis of an action of debt, & not of assumpsit.

T. LYLE DICKEY,
for Defendant.

58 And for plea to the 8th count in said declaration, the defendant says that said defendant did not promise & undertake in manner & form as in said count plaintiff hath alleged, & of this defendant puts itself upon the country.

DICKEY, *for Def't.*

(Endorsed:) Filed Jan'y 6, 1873. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 7th day of January, A. D. 1873, said plaintiff, by his attorney, filed in said clerk's office his motion in said-entitled cause, which said motion is in words and figures following, to wit:

Motion to strike from files dem'r, &c.

U. S. circuit court, northern district Illinois. December term, 1872.

GEORGE NUGENT
vs.
BOARD SUPERVISORS PUTNAM CO. } Assumpsit.

59 And now comes the plaintiff, and moves the court to strike the demurrer and plea herein filed on behalf of the defendant by T. Lyle Dickey, an attorney of this court, from the files, because the same was filed without authority from or the consent of the defendant.

(Endorsed:) Filed Jan. 7, '73. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 7th day of January, A. D. 1873, in the December term, A. D. 1872, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Motion taken under advisement.

GEORGE NUGENT
v.
THE BOARD OF SUPERVISORS OF PUTNAM County.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the plaintiff to strike from the files the demurrer and plea of the defendant filed herein; and, after hearing the arguments of counsel, the court takes the same under advisement.

60 Afterwards, to wit, on the 8th day of January, A. D. 1873, in said December term, A. D. 1872, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Motion overruled, &c.

GEORGE NUGENT
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County.

The court having considered, and being now fully advised upon the motion of the plaintiff to strike the demurrer and plea of the defendant filed herein, overrules the same upon the defendant filing an indemnity-bond herein, which is done; and thereupon leave is given the tax-payers named in the power of attorney filed herewith, to proceed in the defence of this suit in the name of the county of Putnam.

On the same day, to wit, the 8th day of January, A. D. 1873, said defendant, by its attorney, filed in said clerk's office an indemnity-
61 bond and power of attorney in said entitled , which are, respectively, in words and figures following, to wit:

Bond to indemnify county against costs.

Cir. C't U. S., N. D. Ill.

GEORGE NUGENT
vs.
BOARD, &C., OF PUTNAM CO. } Indemnity-bond.

Know all men by these presents that, whereas George Nugent has brought a suit at law in the circuit court of the United States for the northern district of Illinois, wherein said George Nugent is plaintiff & The Board of Supervisors of Putnam County, in said State, is party defendant, & whereas we, the subscribers hereto, are residents of said county and tax-payers in said county; and whereas we, with other tax-payers in said county, have, by their attorney, requested the said board of supervisors to allow them to defend said suit in the name of said board; & whereas said board has neglected to give such author-
62 ity, & has neglected to appear by the attorney of said board, & defend said suit; & whereas we have applied to the circuit court of the United States for the northern district of Illinois, by T. Lyle Dickey, our attorney, for leave to appear in said suit in the name of said board of supervisors & defend said suit, & have filed a demurrer to certain counts in said declaration, & have pleaded to the residue thereof in the name of the said board; & whereas said circuit court of the United States has ruled that we might so appear and defend, upon condition that a bond should be filed in this cause to indemnify & hold the said board of supervisors harmless from all increased costs occasioned by such defence, embracing court-costs & attorn*ies*' fees—

Now, therefore, we, Charles W. Read & others, whose names are hereto subscribed, do, in consideration of one dollar, paid to us by the board of supervisors of said county of Putnam, & in consideration
63 of the facts above stated, *do* jointly & severally bind ourselves, our heirs, executors, & administrators, to said board of supervisors & its successors, that we will indemnify & hold harmless said county of Putnam & said board of supervisors & its successors from all liability, cost, or expense, by reason of any & all increased costs, or attorneys' fees occasioned or to arise from & in consequence of the making of defence to said action by the said tax-payers, in the name of said board.

In witness whereof we have, this 8th day of January, A. D. 1873, by our attorney in fact, Henry Hunter, by power of attorney, duly authorized, hereto set our hands & seals, respectively.

CHARLES W. READ.	[SEAL.]	HENRY JANNY.	[SEAL.]
GEORGE W. CONDIT.	[SEAL.]	EDWARD L. COOK.	[SEAL.]
THOMAS HALLIGAN.	[SEAL.]	ASA BARNHART.	[SEAL.]
JAMES GITTNER.	[SEAL.]	EDMOND RYAN.	[SEAL.]
NELSON BAGBEY.	[SEAL.]	SAMUEL H. CONDIT.	[SEAL.]
HIRAM WHITE.	[SEAL.]	PIERE CONDIT.	[SEAL.]
N. F. SMALL.	[SEAL.]	WILLIAM BARNHART.	[SEAL.]
AARON HAINES.	[SEAL.]	ALVIN PERKINS.	[SEAL.]

All executed by—

HENRY HUNTER,
Attorney in Fact.

64 Witness—
T. LYLE DICKEY.

State of Illinois, circuit court of U. S. for northern dis. of Illinois.

Henry Hunter being duly sworn, says that he resides in the town of Snachwine, in Putnam County, Illinois; that he has been assessor for said town for two different years, & has a general knowledge as a neighbor of the pecuniary responsibility of the men whose names are attached to the foregoing bond; that they are all residents of said town, & from the best information of affiant he believes that if the value of the property of each, over & above his liabilities, were taken & added together, it would amount to at least $75,000, (seventy-five thousand dollars.)

HENRY HUNTER.

Sworn to & subscribed before me this 8th day of January, A. D. 1873.

W'M H. BRADLEY, *Clk.*

Approved.

H. W. BLODGETT, *Judge.*

65 (Endorsed:) Filed Jan. 8, 1873. W'm H. Bradley, cl'k.

Power of attorney.

Circuit court U. S., north'n dis. of Illinois.

GEORGE NUGENT
vs.
BOARD OF SUPERVISORS OF PUTNAM CO., Ill.

Whereas Hiram Stickle, John G. Freeman, Henry Hunter, & others, residents, citizens, and tax-payers in the town of Snachwyne, in Putnam County, Illinois, did, in March, A. D. 1872, file their bill in chancery in the circuit court of Putnam County, Ill., in which the board of supervisors of said Putnam County, & the Plymouth, Kankakee & Pacific R. R. Company, and the clerk of the county court of said county,

& the county treasurer of said county, & the towr collector of said town of Snachwyne & others were made defendants, praying, among other things, that certain railroad bonds, to the
66 amount of about $90,000, which had been issued might be declared void, & for a perpetual injunction to prevent said defendants from taking any measures to collect any taxes from complainants to pay said bonds or interest thereon, & whereas an injunction to that effect pendente lite was allowed & issued from said court & served upon said defendants, which injunction is now in full force, & said suit has been removed by change of venue to the circuit court of McLean Co., & whereas, since that time, one George Nugent, claiming to be the holder of said railroad bonds, has sued the board of supervisors of Putnam County in the circuit court of the U. S. for N. dis. of Ill., upon certain coupons for alleged interest upon said bonds, & whereas the complainants in said chancery suit, & perhaps other tax-payers, propose to ask leave to use the name of said Putnam Co., or the board of supervisors of said county, in defending said suit, & propose for that purpose to indemnify the county of Putnam against any costs made by reason of said defence:

67 Now, therefore, we hereby severally appoint & constitute Henry Hunter our attorney in fact, & authorize him to execute in our behalf, severally or jointly, any bond of indemnity which said circuit court of the U. S. may direct or approve, hereby holding the execution of said bond as valid as is signed & sealed by us respectively in person.

Jan. 4th, 1873.

Witness our seals & signatures hereto:

C. W. READ.	[SEAL.]	HENRY JANNEY.	[SEAL.]
G. W. CONDIT.	[SEAL.]	E. L. COOK.	[SEAL.]
THOMAS HALLIGAN.	[SEAL.]	ASA BARNHART.	[SEAL.]
JAMES GILTNER.	[SEAL.]	ALVIN PERKINS.	[SEAL.]
NELSON BAGLEY.	[SEAL.]	EDMOND RYAN.	[SEAL.]
H. W. WHITE.	[SEAL.]	SAMUEL H. CONDIT.	[SEAL.]
N. F. SMALL.	[SEAL.]	PIERRE CONDIT.	[SEAL.]
AARON HAINES.	[SEAL.]	W'M BARNHART.	[SEAL.]

68 (Endorsed:) Filed Jan'y 8, 1873. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 22d day of January, A. D. 1873, in the December term, A. D. 1872, of said court, in said entitled cause, appear the following entry, to wit:

Demurrer overruled, &c.

GEORGE NUGENT
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County. } Assumpsit.

The court having considered and being now fully advised upon the demurrer of the defendant to the declaration filed herein, overrules said demurrer, and on motion of the defendant, by its attorney, the time is extended until the first Monday in February next, to plead herein.

Afterwards, to wit, on the 3d day of February, A. D. 1873, in the December term, A. D. 1872, of said court, in the record of the proceed-

ings thereof in said entitled cause, appears the following entry, to wit:

69 *Time extended to plead.*

GEORGE NUGENT
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County. } Assumpsit.

On motion of the defendant, by its attorney, the time to plead herein is extended until the eleventh instant.

Afterwards, to wit, on the eleventh day of February, A. D. 1873, said defendant, by its attorneys, filed in said clerk's office its pleas in said entitled cause, which said pleas are in the words and figures following, to wit:

70 *Plea.*

UNITED STATES OF AMERICA,
State of Illinois, ss:

Circuit court of the United States in and for the northern district of Illinois, to the December term, 1872.

THE BOARD OF SUPERVISORS OF PUTNAM County, def't,
ats.
GEORGE NUGENT, PL'T'FF. } Action assumpsit.

1ST PLEA.—And now comes the said defendant, by T. Lyle Dickey, who appears as attorney for said defendant by special leave of the court, & as to the said plaintiff's declaration & the matters therein contained says actio non, because, said defendant says—

That, on the 25th day of May, 1869, at the district aforesaid, viz, at Kankakee, the board of directors of the Kankakee and Illinois River Railroad Company, in pursuance of the 6th section of the charter of said railroad company (which authorizes said board to prescribe regulations for receiving subscriptions to their capital stock from any county) did adopt and spread upon their records & publish to the world a resolution declaring, among other things, that "the various county bonds
71 which may be voted on the line of the Kankakee and Illinois River Railroad, in aid of its construction, should only issue in exchange for the stock of said company when a well-assured contract for the iron shall have been secured by the directors of said railroad company, based upon the completion of the road-bed through said counties."

And that afterwards, in pursuance of said resolution of said board of directors, on the 4th day of June, 1869, the board of supervisors of Putnam County being in session at Hennepin, which is the county-seat of said county of Putnam, & situated on the west line of said county and within three miles of Bureau Junction, mentioned in the charter of said railroad company, did adopt & spread upon their records a resolution, which was & is in the words & figures following, (& is part of record of June 4th, A. D. 1869,) viz:

"Whereas the Kankakee and Illinois River Railroad Company propose

constructing a railroad from the State line between the States of Indiana and Illinois, through the incorporated limits of the town of Momence and city of Kankakee, in Kankakee County, and State of Illinois, and thence through Dwight and Streator, to connect with the Rock Island Railroad at Bureau Junction, or some other point upon said Rock Island Railroad to be hereafter determined;

"Also, whereas said railroad company require aid in the construction of said railroad;

72 "And also, whereas P. B. Durley, William Eddy, and divers and sundry citizens of the county of Putnam, have presented to this board a petition that said county shall subscribe the sum of seventy-five thousand dollars in the stock of said railroad company, in case the said railroad shall be located and constructed through or within one-half of a mile of the incorporated limits of the town of Hennepin, in said county of Putnam, to aid in the construction thereof, and issue the bonds of said county in payment thereof:

"Now, therefore, be it ordered and resolved that an election shall be held on the tenth day of July, A. D. 1869, by the qualified voters of the county of Putnam, and State of Illinois, in pursuance of the statute in such case made and provided, to determine the question whether said county of Putnam shall subscribe the sum of seventy-five thousand dollars in the stock of the said Kankakee and Illinois River Railroad Company, in case the said railroad shall be so located and constructed through or within one-half of a mile of the incorporated limits of the town of Hennepin, in said county of Putnam, and issue bonds for that amount in payment of said subscription, payable in annual instalments of ten thousand dollars, commencing five years after the date of issuing thereof, and annually thereafter until the full amount shall be paid,

73 and bearing interest at the rate of ten per cent. per annum, payable annually; and that said election shall be held at the usual places of holding town meetings and elections in the different towns of said county of Putnam, in conformity with the statute in such case made and provided, and that due notices of said election shall be given by the supervisors of said county, in accordance with law.

"And be it further ordered and resolved that, in case a majority of the voters of said election shall be in favor of the county of Putnam subscribing the said amount of stock in the said railroad company, that then the board of supervisors of said county of Putnam aforesaid, for and in behalf of said county, will subscribe said amount of said stock, and will issue bonds in payment thereof, in the manner hereinbefore provided, and with interest at ten per cent., as above specified.

"And be it further ordered and resolved that the said bonds, or the proceeds thereof, shall be applied to the construction of said railroad in and through the said county of Putnam, as hereinbefore specified, and that the board of supervisors reserve the right to control the application of said bonds, or the proceeds thereof, to the construction of said railroad in said county, and that a committee will hereafter be appointed by said board to carry out the directions, reservations, and intentions of this resolution."

74 And afterward, on the 10th day of July, 1869, (in pursuance of the said resolution so made by said board of supervisors,) an election was held in said county of Putnam, at which a majority of the qualified voters of said county (taking as a standard the vote cast at the then last general election) did vote for such subscription being made in case the said road should be located & constructed through or within

one-half of a mile of the incorporated limits of the town of Hennepin, in said county.

And, afterward, at a meeting of the executive committee of said railroad company, held September 9th, 1869, all subscriptions voted in aid of said railroad previous to that date was accepted, & the president of said railroad company was instructed to notify the proper officers of such counties & to accept all subscriptions that might be made after that date, & in pursuance thereof, by a letter dated September 24th, 1869, addressed to the said board of supervisors of said Putnam County, the president of said railroad company notified them "that the subscription of $75,000, voted by said county in aid of said railroad, was thereby accepted;" which letter was received & accepted & placed upon their files by the said board of supervisors on the 27th day of October, 1869.

And afterwards, (& when said railroad had not been located &
75 constructed through or within one-half of a mile of the incorporated limits of said town of Hennepin, & when no contract for the iron for said railroad had been secured by said board of directors, and when the road-bed for said railroad through said county was not completed, & in fact not begun,) on the 27th day of October, 1869, the said board of supervisors of said Putnam County adopted & spread upon their records a resolution, which was & is in the words & figures following, (being part of record Oct. 27, 1869,) viz:

"Whereas at a special election duly held according to law on the 10th day of July, A. D. 1869, in the county of Putnam, State of Illinois, in pursuance of the resolution of the board of supervisors of said county, made on the 4th day of June, A. D. 1869, a majority of the qualified voters of the county of Putnam aforesaid, taking as a standard the vote cast at the last general election, voted for and in favour of said county of Putnam subscribing the sum of seventy-five thousand dollars in the stock of the Kankakee and Illinois River Railroad Company, according to the statute in such case made and provided:

"Therefore be it resolved, That said subscription of seventy-five thousand dollars is hereby made in pursuance of said resolutions and of said election, for the building of said railroad, subject to the condition
76 hereinafter mentioned: that a committee of five persons be hereafter appointed by this board, whose duty it shall be to direct the issuing of said bonds and protect the interest of said county, and discharge any such other duties as they shall be directed by said board; and that the bonds of the said county of Putnam shall issue for the amount of said subscription, which shall be paid to the said railroad company at par in the payment of said subscription for stock; that said bonds shall be issued in sums of not less than five hundred dollars each, and payable in annual instalments of ten thousand dollars, commencing five years after the date of issuing thereof and annually thereafter until the full amount shall be paid, and bearing interest at the rate of ten per cent. per annum, payable annually; and that the clerk of the county court, under the seal of said court, shall execute in behalf of the county, and issue said bonds to said railroad company when they have complied with the terms herein contained, and upon the written order of said committee; and that said bonds shall not be issued until said railroad company shall have made a bona-fide contract with responsible parties for all necessary iron for said railroad; and that said bonds shall be issued and delivered to said company as aforesaid upon the written orders of said committee as aforesaid; and that said bonds, or the proceeds
77 thereof, shall be applied to the construction of said railroad in and through said county of Putnam, as specified in a previous order of this board.

"And it is further resolved, That said bonds shall not be issued and delivered to said railroad company until said company shall have made a bona-fide contract with responsible parties for laying or putting down the iron and operating said railroad through said county."

And on the same day said board of supervisors appointed Joshua L. Mills, Eli V. Raley, Williamson Durley, Robert Leach, & A. B. Hankins, a committee to direct the issuing of bonds & protect the interests of said county, no one of whom was a member of said board of supervisors of Putnam County.

And afterward, (when no other things or acts had been done toward making the county of Putnam aforesaid a stockholder in any railroad company or toward the subscribing to the capital stock of said railroad company by said county of Putnam or any of its officers in behalf thereof, & before the issue of any of said bonds,) on the 4th day of January, A. D. 1870, the board of supervisors of said county of Putnam did adopt & spread upon its records a resolution, which was & is in the words & figures following, (being part of record Jan. 4, 1870,) viz:

78 "Whereas the Kankakee and Illinois River Railroad Company propose constructing a railroad from the State line between the States of Indiana and Illinois through the incorporated limits of the town of Momence and city of Kankakee, in Kankakee County and State of Illinois, and thence through Dwight and Streator, to connect with the Rock Island Railroad at Bureau Junction or at some other point upon said Rock Island Railroad to be hereafter determined; and whereas said railroad company require aid in the construction of said railroad:

"Also whereas Jefferson Durley, P. B. Durley, Benjamin Sutcliffe, Joel W. Hopkins, J. H. Cook, Robert Leech, J. W. Stewart, A. Monroe, John P. Guborich, W'm Eddy, S. G. Leech, W'm Bowers, Frank Sunderlin, C. A. Winsor, John Foley, W'm Allen, Chester Eddy, Joseph Ham, J. V. McKisson, and H. W. White, citizens of the county of Putnam, have presented to this board a petition that said county shall subscribe the sum of twenty-five thousand dollars in the stock of said railroad company in case said railroad shall be located and constructed through said county, pass by and cross the Illinois River within one-half of a mile of the corporate limits of the town of Hennepin, in said county, to aid in the construction thereof, and issue the bonds of said county in payment thereof:

"Now, therefore, be it ordered and resolved, that an election shall be held on the eighth day of February, A. D. 1870, by the qualified

79 voters of the county of Putnam and State of Illinois, in pursuance of the statute in such case made and provided, to determine the question whether said county of Putnam shall subscribe the sum of twenty-five thousand dollars in the stock of said Kankakee and Illinois River Railroad Company, in case the said railroad shall be so located and constructed through said county of Putnam, pass by and cross the Illinois River within one-half mile of the corporate limits of the town of Hennepin, in said county of Putnam, and issue bonds for that amount in payment of said subscription as follows: Ten thousand dollars, payable twenty years after the date of issuing thereof; ten thousand dollars twenty-one years after the date of issuing; and five thousand dollars twenty-two years after the date of issuing the same, and bearing interest at the rate of ten per cent. per annum, payable annually; and that said election shall be held at the usual place of holding town meetings and elections in the different towns of said county of Putnam, in conformity with the statute in such case made and provided; and that due notices of said

election shall be given by the supervisors of said county, in accordance with law.

"And be it further ordained and resolved, that in case a majority of the voters at said election shall be in favor of the county of Put-
80 nam subscribing the said amount of stock in the said railroad company, then the board of supervisors of said county of Putnam aforesaid, for and in behalf of said county, will subscribe said amount of said stock, and will issue bonds in payment thereof in the manner hereinbefore provided, and with interest at ten per cent., as above specified.

"And be it further ordained and resolved, that said bonds, or the proceeds thereof, shall be applied to the construction of said railroad in and through the said county of Putnam, as hereinbefore specified, and that the board of supervisors reserve the right to control the application of said bonds, or the proceeds thereof, to the construction of said railroad in said county, and that a committee will hereafter be appointed by said board to carry out the directions, reservations, and intentions of this resolution."

81 And afterwards, on the 12th day of January, 1870, the Plymouth, Kankakee & Pacific Railroad Company was organized under the laws of Indiana, and became a corporation with power & for the purpose of building a railroad from Plymouth, Indiana, to the east line of the State of Illinois, at some point to be selected in the direction of Momence & Kankakee, with a view to connect with some railroad leading westward. The railroad to State line to be about 65 miles, & the capital stock of the company to consist of $2,000,000, divided into 40 thousand shares of $50 each.

And afterwards, on the 8th day of February, A. D. 1870, an election was held in said county of Putnam, (in pursuance of the foregoing resolution of January 4th, 1870, so made by said board of supervisors,) at which election a majority of the qualified voters of said county (taking as a standard the vote cast at the then last general election) did vote in favour of "subscription" on the question submitted to the said voters by said board of supervisors, by their aforesaid resolution of the 4th of January, A. D. 1870.

And afterwards, (& when the road-bed for said railroad was not completed through, nor in fact begun within the limits of said county of Putnam, & when no contract for the iron for said railroad had
82 been secured by the directors of said railroad company, & when no provision was made for said iron, and when said railroad was not & had not been located & constructed through or within one-half mile of said town of Hennepin,) on the 15th day of March, 1870, said board of supervisors of Putnam County adopted & spread upon their records a resolution which was & is in the words & figures following, (being part of record of March 15th, A. D. 1870,) viz:

"Whereas at a special election duly held according to law on the 8th day of February, A. D. 1870, in the county of Putnam, State of Illinois, in pursuance of the resolutions of the board of supervisors of said county, made on the 4th day of January, A. D. 1870, a majority of the qualified voters of the county of Putnam aforesaid, taking as a standard the vote cast at the last general election, voted in favour of said county of Putnam subscribing the sum of twenty-five thousand dollars in the stock of the Kankakee and Illinois River Railroad Company, according to the statute in such case made and provided: Therefore

"Be it resolved, that said subscription of twenty-five thousand dol-

lars is hereby made, in pursuance of said resolutions and of said election, for the building of said railroad, subject to the conditions hereinafter mentioned: that a committee of five persons be hereafter appointed by this board, whose duty it shall be to direct the issuing of the
83 bonds mentioned in the resolutions adopted January 4th, 1870, and protect the interest of said county, and discharge such other duties as they shall be directed by said board; and that the bonds of the said county of Putnam shall issue for the amount of said subscription, which shall be paid to the said railroad company at par in the payment of said subscription for stock; that said bonds shall be issued in sums of not less than five hundred dollars each, and payable as follows: Ten thousand dollars payable twenty years after the date of issuing thereof; ten thousand dollars twenty-one years after the date of issuing; and five *hundred* dollars twenty-two years after the date of issuing the same, and bearing interest at the rate of ten per cent. per annum, payable annually; and that the clerk of the county court, under the seal of said court, shall execute in behalf of the county and issue said bonds to said railroad company when they have complied with the terms hereinafter contained, and upon the written order of said committee. Said bonds shall not be issued until said railroad company shall have made a bona-fide contract with responsible parties for all necessary iron for laying the same and operating said railroad through said county; neither shall bonds be issued unless said railroad shall be located in and through said county, pass by and cross the Illinois
84 river within one-half of a mile of the corporate limits of the town of Hennepin, in said county of Putnam."

And on the same day Joshua L. Mills, Eli V. Raley, Williamson Durley, Robert Leach, & A. B. Henkins were appointed by said board of supervisors as a committee to direct the issuing of bonds and protect the interests of said county.

And afterwards, at a session of said board of supervisors of said Putnam County, held at said Hennepin, the following proceedings, among others, were had by said board of supervisors, & duly spread upon their records as part of record, June 25th, 1870.

"Mr. White offered the following:

"Resolved, that the chairman of this board be, and he is hereby, authorized and instructed to make the subscriptions voted in aid of the Kankakee and Illinois River Railroad Company upon the books of said company, subject, however, to the conditions contained in the petitions for calling the election of July 10th, 1869, and the election of February 8th, 1870, for the purpose of voting for or against the county of Putnam subscribing to the capital stock of said company; and, also, subject to the resolutions made by the board of supervisors, making said subscriptions to said company on the record of said board of supervisors.

"The yeas and nays being called, said resolution was lost."

85 And afterwards, on the same day, when said county had not subscribed to the capital stock of said railroad company on the books of said railroad company, nor received any such stock, or a certificate thereof, nor had paid for any such stock, or any instalment thereon, nor in any way other than as above shown become a stockholder of said company, said board of supervisors adopted a resolution, that the chairman of said board be, & he is, authorised & instructed to sign all necessary papers authorising the consolidation of the Kankakee & Illinois River Railroad Company with the Plymouth, Kankakee &

Pacific Railroad Company, & that W'm Eddy be, and he is hereby, made proxy for the county.

And afterward said board of supervisors, on the 20th of September, 1870, adopted a resolution in the words following, viz:

"Resolved, that the chairman of this board be, and he is hereby, authorized and instructed to sign the bonds of Putnam County, to the amount of twenty-five thousand dollars, and place the same in the hands of the committee heretofore appointed by this board, to be, by said committee, delivered to the president and directors of the Kankakee and Illinois River Railroad Company, in amounts and at such times as may be necessary in constructing said railroad through Putnam County, subject to all the conditions upon which the subscrip-
86 tions to the stock of said company were made by said county, and upon the further condition that the proceeds of said bonds shall be expended in building said road through said county of Putnam," which said resolution was adopted. There was no completion of the road-bed for said road through said county, & when no contract or provision for the iron for said railroad had been made by said railroad company or by any one in its behalf, & when said railroad had not been constructed through Hennepin, or within one-half mile thereof.

And afterward, (when no further acts or things had been done, suffered, or occurred, toward making said Putnam County a shareholder in the capital stock of said Kankakee & Illinois River Railroad Company, & when none of the conditions above stated had occurred) on the 21st day of October, 1870, the said Kankakee & Illinois River Railroad Company became consolidated with the said Plymouth, Kankakee & Pacific Railroad Company in their franchises, property, and stock; & the said two companies became merged into one, a new corporation, under the name of the Plymouth, Kankakee & Pacific R. R. Company, by means of a contract executed between the two original railroad companies of that date, & afterwards filed with the secretary of state, in the State of Illinois, by the terms of which, among other things,
87 it was provided that the capital stock of the new company should be $2,500,000, to be divided in shares of $100 each, and that the stockholders of each of the two original corporations should be stockholders of the said consolidated company in like amounts & with like obligations, liabilities, & results between them severally & the said consolidated company as before that existed between them severally, and the said original corporations respectively; & by the terms of which contract all the debts & liabilities of each of the respective original parties became the debts & liabilities of said new or consolidated company; & by the terms of which contract, the business of said consolidated company was to be conducted & was conducted by a board of directors named in said contract, & its successors.

And said Kankakee & Illinois River Railroad Company then & there ceased & has had no corporate organization since that date, & has had no officers whatever.

And afterwards, on the 25th day of October, A. D. 1870, the 25 bonds mentioned in said 1st count in said declaration were signed, sealed, & dated & issued, with the coupons in said count set out, then & there signed & attached thereto, each of which bonds is dated October 25th, 1870, & purports to be a bond of the county of Putnam for $1,000, payable on its face to the Kankakee & Illinois River Railroad Company,
88 or bearer, at the 4th National Bank, New York, on a day named in said bonds respectively, with interest at ten per cent. per annum

annually "on presentation and surrender of the annual coupons," & each of said bonds recite upon their faces respectively that it is issued pursuant to & under the orders of the board of supervisors of Putnam County, for subscription to the capital stock of the Kankakee & Illinois River Railroad Company, as authorised by the laws of the State of Illinois—ten of which bonds are payable on their face twenty years after date, & ten of them twenty-one years after date, & five of them twenty-two years after date. All of said bonds are signed by the chairman of said board of supervisors, & countersigned by the clerk of the county court, & have the seal of said county court of Putnam thereto affixed, & each of which coupon was & is signed by A. T. Purviance, clerk, when in truth & in fact, at the time said bonds were issued, the said railroad, which had been the railroad of the Kankakee & Illinois Railroad Company, had not been & was not constructed through said town of Hennepin, or within one half of a mile of said Hennepin, and is not yet so constructed, & at that time no contract or other provision had been made by said Kankakee & Illinois River Railroad Company for the iron for said railroad, nor by any person or persons in
89 behalf of said railroad company, nor was the road-bed for said road completed through said county, nor had said county of Putnam at the time of the issue & date of said bonds subscribed on the books of either of said railroad company to the capital stock of either the Kankakee & Illinois River Railroad Company or said consolidated company, nor said county of Putnam at that time received any of the stock of either of said corporations.

And afterward, *on* the said Plymouth, Kankakee & Pacific Railroad Company, on the 28th day of November, 1870, issued to said Putnam County a certificate for 250 shares of its capital stock, & delivered said certificate to the clerk of the county court of said county, which had been paid for by the issue of the $25,000 of bonds on the 25th of October, A. D. 1870.

And afterwards, on the 31st day of March, 1871, the board of supervisors of said Putnam County adopted & spread upon their records a resolution, which was & is in the words following, viz:

"Resolved, that the chairman of this board be, and he is hereby, authorized and instructed to sign the bonds of Putnam County to the amount of twenty-five thousand dollars, and place the same in
90 the hands of the committee heretofore appointed by this board, to be by said committee delivered to the president and directors of the Plymouth, Kankakee & Pacific Railroad Company, in amounts and at such times as may be necessary in constructing said railroad through Putnam County, subject to all the conditions upon which the subscriptions to the stock of said company were made by said county, and upon the further conditions that the proceeds of said bonds shall be expended in building said road through said county of Putnam."

And afterwards, on the 10th day of June, the said board of supervisors adopted & spread upon their records the following resolution, viz:

"Resolved, that the chairman of this board be, and he is hereby, authorized and instructed to sign the bonds of Putnam County to the amount of fifty thousand dollars, at such times and in such amounts as the committee heretofore appointed by this board may deem it necessary; said bonds to be dated at the time of issuing the same, and upon the written order of a majority of said committee, and place the same, when signed, in the hands of said committee, to be delivered to the president and directors of the Plymouth, Kankakee & Pacific Railroad Company, in amounts and at such times as may be necessary in constructing

91 said railroad through Putnam County, subject to all the conditions upon which the subscriptions to the stock of said company were made by said county, and upon the further condition that the proceeds of said bonds shall be expended in building said road through said county of Putnam."

And afterwards, on the 15th day of June, 1871, the several bonds, with the coupons attached, which are mentioned in the 2nd, & 3rd, & 7th counts in said declaration, being 25 in number, were signed & sealed, being dated on the 1st day of April, 1871, on their face, & issued on said 15th day of July, 1871, with said coupons in said count attached & signed by said clerk. All of which bonds were signed by the chairman of the board of supervisors of Putnam County, & countersigned by the clerk of the county court, & had the seal of said court attached, & each of which recited on its face that it was given for railroad stock, & was issued in pursuance of orders of the board of supervisors & the laws of Illinois; when in truth & in fact at the time of the issue of said bonds the said railroad was not, had not been, & has not since been constructed either through Hennepin, or within one-half mile of the limits of Hennepin; nor was the road-bed for said railroad completed through said county of Putnam; nor had said county of Putnam received
92 any rail in exchange therefor; nor was said bonds issued in exchange for the stock of the Kankakee & Illinois River Railroad Company, but was issued in payment for stock of said consolidated company, the Plymouth, Kankakee & Pacific Railroad Company, to be issued by said railroad company at some then future day.

And afterwards, on the 26th day of September, 1871, said board of supervisors of said county made, & entered of record, an order levying a tax on all the taxable property assessed in said county for taxation in the year 1871, for the purpose of paying the interest on the bonds of Putnam County, (so called in said order,) issued to aid in the construction of the Plymouth, Kankakee & Pacific Railroad; which tax was not collected, but the officers of said county were forbidden by injunction from collecting the same in a suit in chancery in the State circuit court of said county, in which certain tax-payers in said county were complainants, & said county & its officers & agents, & said railroad company & its agents, were defendants; which suit is still pending.

And on the 26th day of September, 1871, said board made an order & entered the same of record, making E. V. Raley the agent of said county to borrow $2,500 to pay the interest upon said 25 bonds mentioned in said 1st count for the year ending October 25th, 1871, under which
93 order said money was borrowed & said interest was afterwards paid, & the coupons therefor taken up & surrendered to said county.

And afterwards the residue of said bonds and coupons in said declaration mentioned were made & issued by the officers of said county, without any authority or legal power so to do, than is above set forth.

Without this that defendant promised & undertook in manner & form as plaintiff hath in his declaration alleged; & of this defendant puts itself upon the country.

T. LYLE DICKEY,
Att'y for Defendant.

2ND PLEA.—And for a further plea as to the 1st, 2nd, 3rd, 4th, 5th, 6th, & 7th counts of said declaration and the matters therein alleged, defendant says that defendant did not promise & undertake in manner

& form as alleged in said counts or any of them; & of this defendant puts itself upon the country.

T. LYLE DICKEY,
For Defendant.

94 3RD PLEA.—And for a further plea as to the first count in said plaintiff's declaration filed in said cause, & the matters therein alleged, defendant says actio non, because it says—

That before the matters in said count alleged, viz, on the 25th day of May, A. D. 1869, viz, at the district aforesaid, the board of directors of the Kankakee & Illinois River Railroad Company adopted & spread upon the record of their proceedings, & published to the world, a resolution declaring "that the various county bonds which may be voted on the line of the Kankakee & Illinois River Railroad, in aid of its construction, should only issue in exchange for the stock of the company when a well-assured contract for the iron shall have been secured by the said directors, based upon the completion of the road-bed through said counties," of which defendant then & there had notice.

That afterward, on the 4th day of June, A. D. 1869, the said board of supervisors of said county of Putnam, at said county, adopted & spread upon the record of their proceedings a resolution reciting that said Kankakee and Illinois River Railroad Company proposed to construct said road mentioned in the charter of said railroad company, & required aid in the construction thereof & further reciting, that certain citizens of said county had presented a petition to said board of
95 supervisors, asking that said county of Putnam should subscribe ($75,000) seventy-five thousand dollars in the stock of said railroad company, in case the said railroad should be located and constructed through or within one-half mile of the corporate limits of the town of Hennepin in said county, to aid in the construction of said road, & that said county should issue bonds in payment thereof; & by said resolution ordering an election to be held on the 10th day of July, A. D. 1869, to determine the question whether such subscription should be made in case the said railroad should be so located & constructed, & bonds be issued for that amount in payment of such subscription, payable in annual instalments of ($10,000) ten thousand dollars, commencing five years after the date of the issuing thereof, & annually thereafter until the full amount should be paid, & bearing interest at the rate of ten per cent. per annum, payable annually; & further ordering & resolving that in case a majority of the votes should, at such election be in favor of such subscription, then the said board would, in behalf of said county, make such subscription & issue bonds in payment thereof as above provided; & further resolving that the said bonds, or the proceeds thereof, should be applied to the construction of said railroad within said
96 county of Putnam; & that the said board of supervisors did then & would reserve the right to control the application to that end of the said bonds or their proceeds; & that a committee would thereafter be appointed by said board of supervisors to carry out the directions, reservations, & intentions of said resolution.

And defendant further avers that afterwards, on the said 10th day of July, A. D. 1869, in pursuance of said order, (made by said board of supervisors therefor, on the said 4th day of June, A. D. 1869,) an election was held in several towns of said county of Putnam, at which a majority of the legal voters of said county (taking as a basis the number of votes polled at the then last preceding general election held in said county) voted for said subscription proposed as aforesaid, to be made upon the conditions aforesaid.

And defendant further avers that afterwards, and before said railroad of said Kankakee or Illinois River Railroad Company was constructed through or within one-half mile of said town of Hennepin, and before the directors of said Kankakee & Illinois River Railroad Company had secured a well-assured contract for the iron for said railroad, and before the completion of the road-bed of said railroad through said county of Putnam, viz, on the 27th day of October, A. D. 1869, the said board of supervisors of said county of Putnam at &c., adopted and spread
97 upon the records of their proceedings another resolution, which reciting the holding of said election & the result thereof as aforesaid, and resolved & declared that "said subscription is hereby made" of ($75,000) seventy-five thousand dollars, in pursuance of said resolution of June the 4th, 1869. & in pursuance of said election for the building [aiding] of said railroad, subject to the conditions hereinafter.

CONDITIONS.

That a committee of five be hereafter appointed by said board of supervisors to direct the issue of said bonds & protect the interests of said county.

That the said bonds shall issue for ($75,000) seventy-five thousand dollars, to be paid to said railroad company at par, for said subscription of stock.

That said bonds shall be issued payable in annual instalments of ($10,000) ten thousand dollars, beginning five years after the date of issue, with interest payable annually at ten per cent.

That the clerk of the county court shall, in behalf of said county of Putnam, execute & issue said bonds to said railroad company when they have complied with the terms herein contained, & upon the written order of said committee.

That said bonds shall not be issued until said railroad company shall have made a bona-fide contract with responsible parties for
98 all necessary iron for said railroad.

That said bonds or their proceeds shall be applied in said county of Putnam to the construction of said railroad as specified in a previous order of the said board of supervisors.

That said bonds shall not issue to said railroad company until it shall have made a like contract for laying the iron for, & operating said railroad through, said county of Putnam. All of which was then made & remains now of record as part of the proceedings of said board of supervisors, & said railroad company then & there, by a letter dated September 24th, 1869, gave notice to said board of supervisors that said subscription so voted was accepted by said railroad company.

And defendant further avers that afterwards, & on the same day, viz, at &c., by a further resolution of said board of supervisors, a committee of five persons (not being members of said board) were appointed to "direct the issuing of said bonds & to protect the interests of said county," &c.

And defendant further avers that afterwards, & before any of the conditions above stated had been performed by said Kankakee & Illinois River Railroad Company, (& no other or further act having been done towards the subscribing by said Putnam County for stock of said
99 railroad company,) viz, on the 4th day of January, A. D. 1870, the board of supervisors of said county adopted another resolution, which, after reciting that said Kankakee & Illinois River Railroad Company proposed to construct said railroad, (mentioned in its charter,) and

required aid, & that certain citizens of said Putnam County had petitioned said board of supervisors that said county should subscribe ($25,000) twenty-five thousand dollars to the stock of said railroad company, & should issue bonds in payment thereof in case the said railroad should be located & constructed through or within one-half mile of the town of Hennepin in said county, did order an election to be held in said county on the 8th day of February, A. D. 1870, to determine the question whether such subscription should be made & bonds be issued therefor, (in case said railroad should be so located & constructed,) ($10,000) ten thousand dollars payable twenty years after the date of issue, ($10,000) ten thousand dollars payable twenty-one years after the date of the issue, and ($5,000) five thousand dollars payable twenty-two years after the issuing the same, all bearing interest at the rate of (10) ten per cent. per annum, payable annually; & by said resolution it was further resolved that, in case a majority should vote in favor of such sub-
100 scription, the said board of supervisors would in behalf of said county make such subscription & issue said bonds (as above provided) for $25,000 in payment of such subscription; & by said resolution it was further resolved that said bonds or the proceeds thereof should be applied to the construction of said railroad within said county of Putnam & under the control of said board of supervisors, & that a committee should be appointed by said board to carry out the reservations, directions, & intentions of said resolution, which said resolution of the 4th of January, 1870, was then & there caused by said board of supervisors of said Putnam County to be spread upon the record of their proceedin gs.

And defendant further avers that in pursuance of said resolution of said board of supervisors of said Putnam County, so adopted on the said 4th day of January, A. D. 1870, an election was held on the said 8th day of February, A. D. 1870, in the several towns of said county, at which election a majority of the legal voters of said county voted in favour of said proposed subscription of ($25,000) twenty-five thousand dollars to the stock of said railroad company, being made upon the conditions submitted as aforesaid by said board of supervisors, to be so voted upon.

And defendant further avers that afterwards, & before said rail-
101–102 road of said Kankakee & Illinois River Railroad Company was constructed through or within one-half mile of the said town of Hennepin, and before the directors of said railroad company had secured a well-assured contract for the iron for said railroad, and before the completion of the road-bed of said railroad through said county of Putnam, & on the 15th day of March, A. D. 1870, said board of supervisors of said Putnam County adopted another resolution, by which, after reciting the fact of the holding of said election in the said Putnam County on the said 8th of February, A. D. 1870, and the result thereof as aforesaid, they resolved & declared—

That said subscription of ($25,000) twenty five thousand dollars to the capital stock of the Kankakee & Illinois River Railroad Company is hereby made in pursuance of said resolution of the 4th of January, & in pursuance of said election, subject to the conditions hereafter mentioned.

That a committee of five be hereafter appointed by said board of supervisors to direct the issue of said bonds & protect the interests of said county, &c.

That said bonds shall issue for ($25,000) twenty-five thousand dollars, to be paid to said railroad company at par for said subscription of stock.

103 That said bonds shall be issued, ($10,000) ten thousand dollars, payable twenty years from the date of their issuing, ($10,000) ten thousand dollars twenty-one years after the date of issuing, and ($5,000) five thousand dollars twenty-two years after the issue of the same, with interest at ten per cent. per annum, payable annually, &—

That the clerk of the county court of said county of Putnam shall, in behalf of said county, execute & issue, under the seal of said court, said bonds to said railroad company when they shall have complied with terms herein contained & upon the written order of said committee.

That said bonds shall not be issued until said railroad company shall have made a bona-fide contract with responsible parties for all necessary iron for laying the same and operating the said railroad through said county.

That said bonds or their proceeds shall be applied to the construction of said railroad within said county of Putnam, as specified in a previous order of said board of supervisors.

Neither shall said bonds be issued unless said railroad shall be located in & through said county, & pass by & cross the Illinois River,

104 within one-half mile of Hennepin, in said county of Putnam, which resolution said board of supervisors caused then & there to be spread upon the record of their proceedings, under the date of the 15th of March, 1870.

And on the 3rd day of June, A. D. 1870, said railroad company, by its president, notified said board of supervisors that said railroad company did accept said subscription of $25,000 voted by said county in aid of said railroad, styling such subscription in said notice an additional subscription.

And defendant further avers that no resolution of said board of supervisors was ever adopted by said board authorizing any subscription of stock in behalf of said county of Putnam to be made upon the books of said railroad company, & no such subscription was ever made; but, on the contrary, a resolution was submitted to said board of supervisors on the 25th day of June, 1870, for adoption or rejection, authorizing the chairman of said board to make on the books of said railroad company the subscriptions voted in aid of said railroad company, but the same was then & there, by a vote of said board of supervisors, rejected, & said proceeding was duly then & there spread upon their records.

And defendant further avers that on the 25th day of June, A.

105 D. 1870, & before said railroad was constructed through or within one-half mile of said town of Hennepin, & before said directors of said Kankakee & Illinois River Railroad had secured any well-assured contract for the iron for said railroad, and before the road-bed of said railroad was completed through said county of Putnam, & before any subscription to the capital stock of said railroad company had been made on the books of said railroad company by or on behalf of said county, & before said county had received any certificate of stock from said railroad company, and before any payment had been made to said railroad company by or on behalf of said board of supervisors, & for or on account of any alleged subscription to the stock of said railroad company in behalf of said county of Putnam, said board of supervisors did, on the 25th day of June, 1870, adopt a resolution authorizing & instructing the chairman of said board of supervisors to sign the necessary papers authorizing the consolidation of the Kankakee & Illinois River Railroad Company with the Plymouth, Kankakee & Pacific Railroad Company, & further resolving that one William Eddy be made proxy for the said county of Putnam, which resolution was then & there duly spread upon

the records of the proceedings of said board of supervisors of said Putnam County.

106 And defendant further avers that afterwards, & before said county of Putnam had, in any manner other than as above alleged, become a stockholder in the said Kankakee & Illinois River Railroad Company, & before the execution or issue of any of the bonds or coupons in said court mentioned, that is to say, on the 21st day of October, 1870, viz, at the district aforesaid, the Plymouth, Kankakee & Pacific Railroad Company, (a body corporate & politic,) authorized by its chartered right to construct, & then & there engaged in the construction of a railroad from Plymouth, in the State of Indiana, to a point on the State-line between the State of Illinois & the State of Indiana, where was then & there the eastern terminus of the line of the proposed railroad of said Kankakee & Illinois River Railroad Company, & the said Kankakee & Illinois River Railroad Company became and were consolidated & thereby formed a new corporation under the name of the Plymouth, Kankakee & Pacific Railroad Company, which consolidation was effected by a contract executed by said railroad companies respectively, by their respective officers, by the terms of which contract the capital stock of said Plymouth, Kankakee & Pacific Railroad, so formed by said consolidation, was to be $2,500,000, and the

107 holders of stock in each of the original railroad companies aforesaid were, by reason thereof, to be stockholders in the said new corporation formed by said consolidation, & to hold the same amount of stock in said new corporation as such stockholders respectively held in either of the said original corporations, & by which consolidation the stock & property which had been the stock & property of the said Kankakee & Illinois River Railroad Company was consolidated with the stock & property of the original Plymouth, Kankakee & Pacific Railraad Company, & such consolidated stock & property thereby became the stock & property of the new corporation formed by said consolidation, & the said new corporation incurred all the liabilities of each of said original railroad companies, which contract of consolidation was made with the written consent of all the then stockholders of said original railroad companies respectively, & with the written consent of said board of supervisors of said Putnam County, signed by the chairman thereof, in pursuance of the aforesaid resolution of said board of supervisors, authorizing & instructing him so to do; & said William Eddy, as the proxy of said Putnam County, voted in favour of such consolidation in the name of said county, as a stockholder in the Kanka-

108 kee & Illinois River Railroad Company, at an election held by the stockholders of said corporation for the purpose of determining the question of such consolidation.

And defendant further avers that, after said consolidation of said two railroad companies, from that time hitherto, there has been no board of directors, and no officers of any kind of said Kankakee & Illinois River Railroad Company, & so defendant says the said Kankakee & Illinois River Railroad Company then & there ceased to be, & was merged in said new corporation formed by said consolidation, & known as the Plymouth, Kankakee & Pacific Railroad Company.

And defendant further avers that afterwards, & after said the Plymouth, Kankakee & Pacific Railroad Company (formed by said consolidation) was duly organised, and before said railroad (which before said consolidation was the railroad of said Kankakee & Illinois River Railroad Company) was constructed through or within one-half mile of the said town of Hennepin, & before the directors of said Kankakee & Illi-

nois River Railroad Company had secured any contract of any kind for the iron for said railroad, & before said Plymouth, Kankakee & Pacific Railroad Company had secured any contract with any party for
109 the iron for said railroad, & before the iron for said railroad was procured, or in any way provided for, & before the roadbed for said railroad was completed through said county of Putnam, & before said county of Putnam had subscribed (other than as above stated) to the capital stock of either the Kankakee & Illinois Railroad Company aforesaid or the stock of the Plymouth, Kankakee & Pacific Railroad Company, or had (otherwise than as above stated in this plea) become a stockholder in either the said Kankakee & Illinois River Railroad Company or in the said Plymouth, Kankakee & Pacific Railroad Company, & before said county had paid for any stock in either of said railroad companies, or had received from either of them any certificate of stock; that is to say, on the 25th day of October, A. D. 1870, at the district aforesaid, said A. T. Purviance, their clerk of the county court of said Putnam County, with no further authority so to do than is stated above in this plea, did sign & execute, with the seal of said court, in the name of said Putnam County, the said twenty-five coupon bonds in said first count mentioned, & did sign said coupons so attached to said bonds respectively, as alleged in said first count, which said bonds were each dated on the 25th day of October, A. D. 1870, & purported
110 each to be the bond of said county of Putnam for the sum of ($1,000) one thousand dollars, payable on its face to the Kankakee & Illinois River Railroad Company, or to bearer, & which said twenty-five bonds were numbered consecutively from number 76 to number 100, inclusive; ten of which bonds, viz, those numbered consecutively from 76 to 85 inclusive, were made payable, on their face respectively, twenty years after the date thereof; and ten of which bonds, viz, those numbered consecutively from 86 to 95, inclusive, were made payable on their face, respectively, twenty-one years after their date; and five of which bonds, viz, those numbered consecutively from 96 to 100, inclusive, were respectively made payable on their face, twenty-two years after their date; & each of said twenty-five bonds, purported on its face to bear interest at the rate of ten per cent. per annum, & payable annually, & to each of said bonds, when so issued, were then & there attached coupons, one for each year's interest upon said bonds, which, by the terms of such bond, was to accrue; & each of said coupons was signed by said A. T. Purviance, the clerk of the county court of said county of Putnam as county clerk.

Which said bonds, with said coupons attached, were then &
111 there issued by said clerk, & delivered to the said Plymouth, Kankakee & Pacific Railroad Company, in payment for ($25,000) twenty-five thousand dollars stock of said Plymouth, Kankakee & Pacific Railroad Company, to be thereafter issued to said county of Putnam by said Plymouth, Kankakee & Pacific Railroad Company, and not in part payment of ($100,000,) one hundred thousand dollars stock of capital stock of the Kankakee & Illinois River Railroad Company.

And said defendant denies, without this, that defendant signed & caused to be issued & delivered to said Plymouth, Kankakee & Pacific *River* Railroad Company the said twenty-five coupons in said count set out, or any one of them, in manner and form as plaintiff hath in said count alleged; and of this defendant puts itself upon the country.

T. LYLE DICKEY,
for Defendant.

112 4TH PLEA.—And for a further plea to the first count in said declaration, and the matters & things therein alleged, defendant say actio non, because, it says, that long before the issuing of the bonds & coupons mentioned in said count, and on the 25th day of May, A. D. 1869, the board of directors of said Kankakee & Illinois River Railroad Company (in pursuance of a clause in their charter authorizing them to prescribe by their regulations the terms for receiving subscriptions to their capital stock from any county, city, town, or village) adopted, spread upon their records, & published to the world a resolution, in substance:

That the various county bonds which might thereafter be voted on the line of their proposed railroad in aid thereof, should only issue when a well-assured contract for the iron should be secured by said directors, based upon the completion of the road-bed through said counties, of which plaintiff & defendant then & there had notice.

And afterward, on the 4th of January, 1870, the board of supervisors of said Putnam County adopted & spread upon their records a resolution, which was & is in the words & figures following, viz:

113 "Whereas the Kankakee and Illinois River Railroad Company propose constructing a railroad from the State line, between the States of Indiana and Illinois through the incorporated limits of the town of Momence, and city of Kankakee, in Kankakee County, and State of Illinois, and thence through Dwight and Streator, to connect with the Rock Island Railroad at Bureau Junction, or at some other point upon said Rock Island Railroad to be hereafter determined;

"Also, whereas said railroad company require aid in the construction of said railroad;

"Also, whereas Jefferson Durley, P. B. Durley, Benjamin Sutcliffe, Joel W. Hopkins, J. H. Cook, Robert Leech, J. W. Stewart, A. Monroe, John P. Gutorich, W'm Eddy, S. G. Leech, W'm Bowers, Frank Sunderlin, C. A. Winsor, John Foley, W'm Allen, Chester Eddy, Joseph Haw, J. V. McVisson, and H. W. White, citizens of the county of Putnam, have presented to this board a petition that said county shall subscribe the sum of twenty-five thousand dollars in the stock of said railroad company, in case said railroad shall be located and constructed through said county, pass by and cross the Illinois River within one-half of a mile of the corporate limits of the town of Hennepin, in said county, to aid in the construction thereof, and issue the bonds of said county in payment thereof:

114 "Now, therefore, be it ordered and resolved, that an election shall be held on the eighth day of February, A. D. 1870, by the qualified voters of the county of Putnam, and State of Illinois, in pursuance of the statute in such case made and provided, to determine the question whether said county of Putnam shall subscribe the sum of twenty-five thousand dollars in the stock of said Kankakee and Illinois River Railroad Company, in case the said railroad shall be so located and constructed through said county of Putnam, pass by and cross the Illinois River within one-half mile of the corporate limits of the town of Hennepin, in said county of Putnam, and issue bonds for that amount in payment of said subscription as follows: Ten thousand dollars, payable twenty years after the date of issuing thereof; ten thousand dollars, twenty-one years after the date of issuing, and five thousand dollars, twenty-two years after the date of issuing the same, and bearing interest at the rate of ten per cent. per annum, payable annually. And that said election shall be held at the usual place of holding town meetings and elections, in the different towns of said county of Putnam, in

conformity with the statute in such case made and provided; and that due notices of said election shall be given by the supervisors of said county in accordance with law.

115 "And be it further ordained and resolved, that in case a majority of the voters of said election shall be in favour of the county of Putnam subscribing the said amount of stock in the said railroad company, then the board of supervisors of said county of Putnam aforesaid, for and in behalf of said county, will subscribe said amount of said stock, and will issue bonds in payment thereof, in the manner hereinbefore provided, and with interest at ten per cent., as above specified.

"And be it further ordained and resolved, that said bonds, or the proceeds thereof, shall be applied to the construction of said railroad in and through the said county of Putnam, as hereinbefore specified, and that the board of supervisors reserve the right to control the application of said bonds, or the proceeds thereof, to the construction of said railroad in said county, and that a committee will hereafter be appointed by said board to carry out the directions, reservations, and intentions of this resolution."

And afterwards, on the notices which were published for said election, it was announced that said election would be held for the purpose of voting for or against the county of Putnam subscribing the sum of $25,000 in the capital stock of the Kankakee & Illinois River Railroad Company, for the purpose of aiding in the construction of said railroad through said county in case the same shall be located & con-

116 structed through said county, pass by & cross the Illinois River within one-half of a mile of the corporate limits of the town of Hennepin in said county, bonds drawing ten per cent. interest per annum, (interest payable annually,) to be issued by said county, in payment for subscription, as follows: $10,000 payable 20 years after the date of issuing thereof, $10,000 payable 21 years after the date of issuing, & $5,000 thereof 22 years after the date of issuing the same.

Said bonds are not to be issued & delivered to said railroad company until said company shall have made a bona-fide contract with responsible parties for all necessary iron, for laying the same, & for operating said railroad through said county of Putnam.

And on the 12th day of January, 1870, the Plymouth, Kankakee & Pacific Railroad Company was organized under the laws of Indiana—a corporation whose capital stock was to be $2,500,000, & be divided into shares of $50 each, organised to construct, equip, & operate a railroad from Plymouth, in Indiana, to a point on the east line of Illinois, in the direction of Momence in Illinois, with a view to connect with some road running westward.

And afterwards, an election was held in said county of Putnam,

117 on the 8th of February, 1870, for the purpose, & with the result stated in the following resolution. And on the 15th day of March, the said board of supervisors passed the following resolution:

"Whereas at a special election, duly held according to law, on the 8th day of February, A. D. 1870, in the county of Putnam, State of Illinois, in pursuance of the resolutions of the board of supervisors of said county, made on the 4th day of January, A. D. 1870, a majority of the qualified voters of the county of Putnam aforesaid, taking as a standard the vote cast at the last general election, voted in favor of said county of Putnam subscribing the sum of twenty-five thousand dollars in the stock of the Kankakee and Illinois River Railroad Company, according to the statute in such case made and provided:

"Be it resolved, That said subscription of twenty-five thousand dollars is hereby made, in pursuance of said resolutions and of said election, for the building of said railroad, subject to the conditions hereinafter mentioned: that a committee of five persons be hereafter appointed by this board, whose duty it shall be to direct the issuing of the bonds mentioned in the resolutions adopted January 4th, 1870, and protect the interest of said county, and discharge such other duties as they
118 shall be directed by said board; and that the bonds of the said county of Putnam shall issue for the amount of said subscription, which shall be paid to the said railroad company at par in the payment of said subscription for stock; that said bonds shall be issued in sums of not less than five hundred dollars each, and payable as follows: Ten thousand dollars payable twenty years after the date of issuing thereof, ten thousand dollars twenty-one years after the date of issuing, and five thousand dollars twenty-two years after the date of issuing the same, and bearing interest at the rate of ten per cent. per annum, payable annually; and that the clerk of the county court, under the seal of said court, shall execute in behalf of the county and issue said bonds to said railroad company when they have complied with the terms hereinafter contained, and upon the written order of said committee. Said bonds shall not be issued until said railroad company shall have made a bona-fide contract with responsible parties for all necessary iron, for laying the same, and operating said railroad through said country; neither shall bonds be issued unless said railroad shall be located in and through said country, pass by and cross the Illinois River within
119 one-half of a mile of the corporate limits of the town of Hennepin, in said county of Putnam."

And afterward, on the same day, said board of supervisors, by resolution, appointed Joshua L. Mills, Eli V. Raley, Williamson Durley, Robert Leach, & A. B. Henkins a committee to order the issuing of bonds & to protect the interests of said county.

And afterward, on the 25th day of June, 1870, at a session of said board of supervisors, held at said Hennepin, the following proceedings (among others) were had by the said board of supervisors, & were then & there spread upon their records, (as part of record, June 25th, 1870,) in words and figures following, to wit:

"Mr. White offered the following:

"Resolved, That the chairman of this board be, and he is hereby, authorized and instructed to make the subscriptions voted in aid of the Kankakee and Illinois River Railroad Company upon the books of said company, subject, however, to the conditions contained in the petitions for calling the election of July 10th, 1869, and the election of February 8th, 1870, for the purpose of voting for or against the county of Putnam subscribing to the capital stock of said company, and also subject to the resolutions made by the board of supervisors making said subscriptions to said company on the record of said board of supervisors.

120 "The yeas and nays being called, said resolution was lost."

And afterwards said board of supervisors adopted & spread upon their records, on the 20th of September, 1870, the following resolution, viz:

"Resolved, That the chairman of this board be, and he is hereby, authorized and instructed to sign the bonds of Putnam County to the amount of twenty-five thousand dollars, and place the same in the hands of the committee heretofore appointed by this board, to be by said committee delivered to the president and directors of the Kankakee and

Illinois River Railroad Company, in amounts and at such times as may be necessary in constructing said railroad through Putnam County, subject to all the conditions upon which the subscriptions to the stock of said company were made by said county, and upon the further condition that the proceeds of said bonds shall be expended in building said road through said county of Putnam."

And afterward, (when said county of Putnam had not in any manner or to any degree other or further than is alleged above in this plea become a stockholder in said Kankakee & Illinois River Railroad Company, & when none of the bonds & coupons in said count men-
121 tioned had been issued.) on the 21st day of October, the said Kankakee & Illinois River Railroad Company became consolidated with the said Plymouth, Kankakee & Pacific Railroad Company, by means of a contract executed by each of said railroad companies, by their respective officers thereto authorized by the stockholders of said companies respectively, & filed in office of the secretary of state, in the State of Illinois, & thereby was formed by said consolidation a new corporation, under the name of the Plymouth, Kankakee & Pacific Railroad Company, the capital stock of which was to be $2,500,000, to be divided into shares of $100 each, & by the terms of which contract of consolidation the holders of stock in each of said original railroad companies were, by reason thereof, to be stockholders in the said new corporation formed by said consolidation, & each to hold the same amount of stock in the new corporation as such stockholder held in either of said original railroad companies at the time of said consolidation & by the terms of which contract the stock, property, & franchises of each of said original corporations was & became consolidated; & such consolidated stock & property & franchises became the stock, property, & franchises of said new corporation formed by said consolidation, & the debts & liabilities, which were debts & liabilities of either of said original corporations before said consolidation, thereby became the debts & liabilities of
122 said new corporation so formed; & all this was then & there done with the written consent of said board of supervisors of Putnam County; and said W'm Eddy, as proxy for said county, voted for said consolidation; and since said consolidation there has been no organization or officers of said Kankakee & Illinois River Railroad Company; but said corporation, being merged in said consolidated corporation, thereby ceased.

And afterwards, on the 25th of October, 1870, after said new corporation, formed by said consolidation, was duly organized under the name of the Plymouth, Kankakee & Pacific Railroad Company, & after said Kankakee & Illinois River Railroad Company had so become merged & so ceased to be a corporation, and while said railroad (which before said consolidation, was the railroad of said Kankakee & Illinois River Railroad Company) was not constructed through Hennepin, or within one-half mile thereof, & while that fact was palpable to the observation of all persons visiting said Hennepin, & when no contract or other provision for the iron for said railroad had ever been made by either of said railroad companies, and when the road-bed for said railroad was not completed & not even begun, and when said county of Putnam had in no way or degree (other than above stated in this plea) subscribed to the capital stock of either of said railroad companies, & had in no way or degree other than as above stated in this plea become a stock-
123 holder in either of said railroad companies, & when said county of Putnam had not received any stock or certificate for stock in either of said railroad companies, and had never paid for any such

stock or any instalment thereon, and when no written order had been made by said committee directing the issue of said bonds, the said bonds (in said first count mentioned) & the coupons thereto attached (which are mentioned in said first count) were signed & issued (said bonds being sealed with the seal of said county court, & each dated on the 25th day of October, 1870, & each purporting to be the bond of the county of Putnam aforesaid, for $1,000, & to bear interest at the rate of 10 per cent. per annum from date, payable annually, upon the presentation of the annual coupon, which bonds were numbered consecutively from 76 to 100, inclusive, ten of which bonds were made payable 20 years after date, ten of them 21 years after date, & five of them 22 years after date, & each of said bonds recites upon its face that it is issued for a subscription of stock to said Kankakee & Illinois River Railroad Company, & refers to the laws of the State & the orders of the said board of supervisors as the foundation thereof) and delivered to the said new corporation, the Plymouth, Kankakee & Pacific
124 Railroad Company, (not in payment or part payment of any stock of the Kankakee & Illinois River Railroad Company,) but in payment in advance for stock of said new corporation, the Plymouth, Kankakee & Pacific Railroad Company, to be thereafter issued & delivered to said county Putnam, by said railroad company so formed by said consolidation.

And when said A. T. Purviance signed said coupons, purporting to be in behalf of said Putnam County, & so signed & sealed said bonds, he had no other or further authority so to do than is above set forth in this plea, and defendant did not (other than stated above in this plea) sign & cause to be issued & delivered said coupons in said count mentioned, nor execute and deliver said bonds in said count mentioned, nor did the county of Putnam (otherwise) subscribe to the capital stock of said Kankakee & Illinois River Railroad Company, nor were the said board of supervisors (otherwise) authorized by a vote of a majority of the voters of said county to subscribe for any of the stock of said railroad company, nor was the signing of said coupons by said clerk of said county court otherwise authorized or appointed than is above stated in this plea.

Without this, that defendant promised & undertook in manner and form as plaintiff hath in said first count alleged; and of this defendant puts itself upon the country.

T. LYLE DICKEY,
Att'y for Def't.

125 5TH PLEA.

And for a further plea as to the second, third, & seventh counts in said declaration, & the matters in said counts alleged, defendant says actio non, because it says—

That long before the signing & issuing of said coupons, set out in said second, third, & seventh counts, & on the 25th day of May, A. D. 1869, the board of directors of said Kankakee & Illinois River Railroad Company, (in pursuance of a section in the charter of said company, authorizing them to prescribe by their regulations the terms for receiving subscriptions to their capital stock from any county, city, town, or village,) adopted & spread upon their records & published to the world a resolution in substance: That the various county bonds which might be voted on the line of their proposed road in aid thereof, should only issue when a well-assured contract for the iron should be secured by

said directors, based upon the completion of the road-bed through said counties, of which defendant & plaintiff then & there had notice.

And afterward, on the 4th day of June, 1869, the board of supervisors of said Putnam County, being in session at the town of Hennepin, the county-seat of said county, adopted & spread upon their records a resolution which was & is in the words & figures following, viz:

126 "Whereas the Kankakee and Illinois River Railroad Company propose constructing a railroad from the State line, between the States of Indiana and Illinois, through the incorporated limits of the town of Momence and city of Kankakee, in Kankakee County, and State of Illinois, and thence through Dwight and Sheator, to connect with the Rock Island Railroad at Bureau Junction, or some other point upon said Rock Island railroad, to be hereafter determined.

"Also, whereas said railroad company require aid in the construction of said railroad.

"And also, whereas P. B. Durley, William Eddy, and divers and sundry citizens of the county of Putnam, have presented to this board a petition that said county shall subscribe the sum of seventy-five thousand dollars in the stock of said railroad company, in case the said railroad shall be located and constructed through or within one-half of a mile of the incorporated limits of the town of Hennepin, in said county of Putnam, to aid in the construction thereof, and issue the bonds of said county in payment thereof.

"Now, therefore, be it ordered and resolved, that an election shall be held on the tenth day of July, A. D. 1869, by the qualified voters of the county of Putnam, & State of Illinois, in pursuance of the statute in such case made and provided, to determine the question whether

127 said county of Putnam shall subscribe the sum of seventy-five thousand dollars in the stock of the said Kankakee and Illinois River Railroad Company, in case the said railroad shall be so located and constructed through or within one-half of a mile of the incorporated limits of the town of Hennepin, in said county of Putnam, and issue bonds for that amount in payment of said subscription, payable in annual instalments of ten thousand dollars, commencing five years after the date of issuing thereof, and annually thereafter until the full amount shall be paid, and bearing interest at the rate of ten per cent. per annum, payable annually. And that said election shall be held at the usual places of holding town meetings and elections in the different towns of said county of Putnam, in conformity with the statute in such case made and provided, and that due notices of said election shall be given by the supervisors of said county in accordance with law.

"And be it further ordered and resolved, that in case a majority of the voters of said election shall be in favor of the county of Putnam subscribing the said amount of stock in the said railroad company, that then the board of supervisors of said county of Putnam aforesaid, for and in behalf of said county, will subscribe said amount of said stock and will issue bonds in payment thereof, in the manner hereinbefore provided, and with interest at ten per cent., as above specified.

128 "And be it further ordered and resolved, that the said bonds or the proceeds thereof shall be applied to the construction of said railroad in and through the said county of Putnam, as hereinbefore specified, and that the board of supervisors reserve the right to control the application of said bonds or the proceeds thereof to the construction of said railroad in said county, and that a committee will hereafter be appointed by said board to carry out the directions, reservations, and intentions of this resolution."

And afterwards, on the said 10th day of July, 1869, an election was held in said county of Putnam, in said State of Illinois, in pursuance of said order aforesaid, at which a majority of the legal voters (taking as a basis the number of votes cast at the then last preceding general election) of said county voted "For subscription" upon the question so submitted to them by the aforesaid order, calling said election.

And afterwards, on the 24th day of September, 1869, said Kankakee & Illinois River Railroad Company, through its officers, declared that the subscription of $75,000 voted by said county of Putnam, in aid of said railroad, was accepted, of which notice was given to the said board of supervisors on the 27th day of October, 1869, which notice was then & there accepted of record.

And on the same 27th day of October, 1869, said board of supervisors adopted & spead upon its records another resolution, which was
129 & is in the words & figures following, (being part of record, Oct. 27, 1869,) viz:

"Whereas, at a special election duly held according to law on the 10th day of July, A. D. 1869, in the county of Putnam, State of Illinois, in pursuance of the resolution of the board of supervisors of said county made on the 4th day of June, A. D. 1869, a majority of the qualified voters of the county of Putnam aforesaid, taking as a standard the vote cast at the last general election, voted for and in favour of said county of Putnam subscribing the sum of seventy-five thousand dollars in the stock of the Kankakee and Illinois River Railroad Company, according to the statute in such case made and provided, Therefore:

"Be it resolved, that said subscription of seventy-five thousand dollars is hereby made in pursuance of said resolutions and of said election for the building of said railroad, subject to the condition hereinafter mentioned: that a committee of five persons be hereafter appointed by this board, whose duty it shall be to direct the issuing of said bonds and protect the interest of said county, and discharge any such other duties as they shall be directed by said board; and that the bonds of the said county of Putnam shall issue for the amount of said subscription, which shall be paid to the said railroad company at par in the payment of said subscription for stock; that said bonds shall be issued in sums of not less than five hundred dollars each, and payable in annual instal-
130 ments of ten thousand dollars, commencing five years after the date of issuing thereof, and annually thereafter until the full amount shall be paid, and bearing interest at the rate of ten per cent. per annum, payable annually; and that the clerk of the county court, under the seal of said court, shall execute in behalf of the county, and issue said bonds to said railroad company, when they have complied with the terms therein contained, and upon the written order of said committee; and that said bonds shall not be issued until said railroad company shall have made a bona-fide contract with responsible parties for all necessary iron for said railroad, and that said bonds shall be issued and delivered to said company as aforesaid, upon the written orders of said committee as aforesaid; and that said bonds or the proceeds thereof shall be applied to the construction of said railroad in and through said county of Putnam, as specified in a previous order of this board.

"And it is further resolved, that said bonds shall not be issued and delivered to said railroad company until said company shall have made a bona-fide contract with responsible parties for laying or putting down the iron and operating said railroad through said county."

And afterward, on the same day, said board of supervisors, by reso-

lution, appointed Joshua L. Mills, Eli V. Raley, Williamson Durley, Robert Leach, & A. B. Henkins a committee to direct the issuing of bonds & protect the interests of said county.

131 And afterward, on the 12th day of January, A. D. 1870, the Plymouth, Kankakee & Pacific Railroad Company was organised under the laws of the State of Indiana, a corporation organised & empowered to construct & operate a railroad from Plymouth, Indiana, to a point on the east line of the State of Illinois, in the direction of the town of Momence, in Illinois, with a veiw to connect with some railroad running westward, the capital stock of which was to be $2,000,000, divided into shares of fifty dollars each.

And afterwards, on the 25th day of June, 1870, the said board of supervisors being in session, the following proceedings (among others) were held by said board of supervisors, & were then & there spread upon their records, in the words & figures following, viz:

"Mr. White offered the following:

"Resolved, that the chairman of this board be, and he is hereby, authorized and instructed to make the subscriptions voted in aid of the Kankakee and Illinois River Railroad Company, upon the books of said company, subject, however, to the conditions contained in the petitions for calling the election of July 10th, 1869, and the election of February 8th, 1870, for the purpose of voting for or against the county of Putnam subscribing to the capital stock of said company, and, also, subject to the resolutions made by the board of supervisors, making said subscriptions to said company, on the record of said board of supervisors.

"The yeas and nays being called, said resolution was lost."

132 And afterwards, on the same day, the said board of supervisors passed a resolution by which they directed the chairman of said board to sign, in behalf of the said county, all necessary papers authorising the consolidation of the Kankakee & Illinois River Railroad Company with the Plymouth, Kankakee & Pacific Railroad Company, & appointed William Eddy proxy for said county.

And afterwards said board of supervisors, on the 20th of September, 1870, adopted and spread upon their records a resolution in the words following, viz:

"Resolved, that the chairman of this board be, and he is hereby, authorized and instructed to sign the bonds of Putnam County, to the amount of twenty five thousand dollars, and place the same in the hands of the committee heretofore appointed by this board, to be by said committee delivered to the president and directors of the Kankakee and Illinois River Railroad Company, in amounts and at such times as may be necessary in constructing said railroad through Putnam County, subject to all the conditions upon which the subscriptions to the stock of said company were made by said county, and upon the further condition that the proceeds of said bonds shall be expended in building said road through said county of Putnam."

And afterwards, (when said county of Putnam had not in any manner or to any degree other or further than is alleged above in this plea become a stockholder in said Kankakee & Illinois River Railroad

133 Company, & when none of the bonds or coupons in said count mentioned had been issued,) on the 21st day of October, the said Kankakee & Illinois River Railroad Company became consolidated with the said Plymouth, Kankakee & Pacific Railroad Company, by means of a contract executed by each of said railroad companies, by their respective officers thereto authorized by the stockholders of said

companies respectively, & filed in the office of the secretary of state, in the State of Illinois, & thereby was formed by said consolidation a new corporation, under the name of the Plymouth, Kankakee & Pacific Railroad Coupany, the capital stock of which was to be $2,500,000, to be divided into shares of $100 each, & by the terms of which contract of consolidation the holders of stock in each of said original railroad companies were, by reason thereof, to be stockholders in the said new corporation formed by said consolidation, & each to hold the same amount of stock in the new corporation as such stockholders held in either of said original railroad companies at the time of said consolidation, & by the terms of which contract the stock, property, & franchises of each of said original corporations was & became consolidated, & such consolidated stock, & property, & franchises of said new corporation formed by said consolidation, & the debts & liabilities which were debts & liabilities of either of said original corporations before said consolidation thereby became the debts and liabilities of said new corporation so formed, & all this was then & there done with the
134 written consent of said board of supervisors of Putnam County, & said W'm Eddy, as proxy for said county, voted for said consolidation, and since said consolidation there has been no organization or officers of said Kankakee & Illinois River Railroad Company, but said corporation, being merged in said consolidated corporation, thereby ceased.

And afterwards, on the 31st day of March, 1871, said board of supervisors of said county of Putnam adopted & spread upon its records a resolution in the words following, viz:

"Resolved, That the chairman of this board be, and he is hereby authorized and instructed to sign the bonds of Putnam County to the amount of twenty-five thousand dollars, and place the same in the hands of the committee heretofore appointed by this board, to be by said committee delivered to the president and directors of the Plymouth, Kankankee & Pacific Railroad Company, in amounts and at such times as may be necessary in constructing said railroad through Putnam County, subject to all the conditions upon which the subscriptions to the stock of said company were made by said county, and upon the further condition that the proceeds of said bonds shall be expended in building said road through said county of Putnam."

And afterward, on the 10th day of June, 1871, said board of supervisors adopted & spread upon their records the following resolution viz:

135 "Resolved, That the chairman of this board be, and he is hereby, authorized and instructed to sign the bonds of Putnam County, to the amount of fifty thousand dollars, at such times and in such amounts as the committee heretofore appointed by this board may deem it necessary; said bonds to be dated at the time of issuing the same, and upon the written order of a majority of said committee, and place the same, when signed, in the hands of said committee, to be delivered to the president and directors of the Plymouth, Kankakee & Pacific Railroad Company, in amounts and at such times as may be necessary in constructing said railroad through Putnam County, subject to all the conditions upon which the subscriptions to the stock of said company were made by said county, and upon the further condition that the proceeds of said bonds shall be expended in building said road through said county of Putnam."

And afterward, on the 15th day of June, 1871, after the said consolidation of said railroad companies was fully accomplished, & when there

was no organization or officers of said Kankakee & Illinois River Railroad Company, & when the said railroad (which before said consolidation was the railroad of said Kankakee & Illinois River Railroad Company) was not constructed through said Hennepin, or within one-half mile thereof, & while that fact was palpable to the observation of
136 all goers & comers to & from said Hennepin, & when the roadbed for said railroad had not been completed through said county of Putnam, and when said county of Putnam had not in any way or degree otherwise than as above stated in this plea subscribed to the capital stock of said Kankakee and Illinois River Railroad Company, under & in pursuance of said election of the 10th July, 1869, and when said county had not (in any way or degree other than as above stated in this plea) become a stockholder in either of said railroad companies, & when no written order, signed by a majority of said committee, had directed the issue of said bonds, the said bonds & coupons mentioned in said second, 3rd, & 7th counts mentioned, were then & there signed & issued, (the said bonds being signed by the chairman of said board of supervisors, & countersigned by the clerk of the county court of said county of Putnam, & sealed with the seal of said court, & being then & there dated, upon this face, on the 1st day of April, A. D. 1871, and each of them purporting on its face to be the bond of said county of Putnam for the sum of $1,000, & to bear interest from its date, payable annually, at the rate of 10 per cent. per annum, payable on the presentation of the proper annual coupon; which bonds were numbered from 1 to 25, inclusive; ten of which bonds were payable five years after their date, & ten six years after date, & five payable seven years after date, & on the face of each of which bonds it was, & is, recited, in substance, that they were issued for a subscription of stock to the said Kankakee & Illinois River Railroad Company, & the laws of
137 Illinois, & the orders of said board of supervisors referred to as the foundation thereof, & the said coupons thereto attached being then & there signed by said clerk of said county court,) and said bonds were then & there delivered to said consolidated company, the Plymouth, Kankakee & Pacific Railroad Company, not in payment or part payment of stock of the Kankakee & Illinois River Railroad Company, but in payment, in advance, for certain shares of the stock of said consolidated corporations, to be thereafter issued to said county of Putnam, which stock said county of Putnam had not then received, or any certificate therefor, & had not subscribed for the same otherwise than as above stated in this plea, nor paid for the same or any instalment thereon.

And when said A. T. Purviance signed said coupons, purporting to be in behalf said Putnam County, & so signed & sealed said bonds, & when said chairman signed said bonds, they & each of them had no other or further authority so to do than is above set forth in this plea, and defendant did not (other than above stated in this plea) sign & cause to be issued and delivered said coupons in said count mentioned, nor otherwise execute & deliver said bonds in said count mentioned; nor did the county of Putnam otherwise subscribe to the capital stock of said Kankakee & Illinois River Railroad Company, nor were the
138 said board of supervisors otherwise authorized lawfully to subscribe for any of the stock of said railroad company; nor was the signing of said coupons by said clerk of said county court otherwise authorized or appointed than as above stated in this plea.

Without this, that said defendant undertook & promised in manner &

form as alleged in said second, third, & seventh counts, or either of them; & of this it puts itself upon the country.

T. LYLE DICKEY, *for Def't.*

(Endorsed:) Filed Feb'y 11th, 1873. W'm H. Bradley, cl'k.

Afterwards, to wit, on the thirteenth day of February, A. D. 1873, said plaintiff, by his attorney, filed in said clerk's office his replications in said entitled cause, which said replications are in the words and figures following, to wit:

139 *Replications to pleas.*

UNITED STATES OF AMERICA,
State of Illinois:

Circuit court northern dist. Ill's.—December term, A. D. 1872.

GEORGE NUGENT
vs.
THE BOARD SUPERVISORS PUTNAM CO., ILLINOIS.

And for replication in this behalf to the first plea of the defendant filed on the 11th day of February, A. D. 1873, plaintiff says precludi non, because he saith that before said bonds were issued, or any of them, that the line of said railroad had been located through said county upon the line called for in said orders for election, and subscriptions and each of said subscriptions had been accepted by the railroad company before the said consolidation, and was a binding contract on said county; and the said board of supervisors, acting in the name of said county, then had and hath ever since taken part in and voted in the affairs of said company and in the affairs of the consolidated co. since the said consolidation as a stockholder, and consented to said consolidation.

140 And the plaintiff in fact saith that before any of said bonds were issued and delivered the said consolidated railroad co. had made a bona-fide contract with responsible parties for all necessary iron, for laying the same, and operating said railroad through said county; and that before any of said bonds were issued and delivered, the said contract and certain letters of advice and information as to the responsibility of the parties signing the same was submitted to the said committee, a majority of whom in good faith decided that said contract was a compliance with the condition in said subscriptions as to the running and operating the road, and decided that all of said conditions had been complied with, and on the 29th day of November, A. D. 1870, filed the resolution in writing of said committee, signed by Williamson Durley, as chairman, and by Joshua L. Mills, as clerk of said committee, dated on said day, with the county clerk of said county, authorizing him to sign the Putnam Co. railroad bonds to the amount of twenty-five thousand dollars, and place the same in the hands of said committee to be sold, and appropriate the proceeds in accordance with the order of said board.

141 Whereupon the said clerk of said county on said day signed, sealed, (the same being also signed by the chairman of said board,) and delivered said bonds and coupons to the said committee, the coupons being signed by said clerk, and received the said certificate of stock therefor.

And the said committee afterwards, during the year A. D. 1870, through the said railroad officers, and with their consent, sold and delivered the said bonds and coupons to the plaintiff for value.

And the other bonds and coupons in the said plea mentioned were afterwards, from time to time, issued and delivered to the said committee upon the order of a majority of said railroad committee, the written orders therefor being signed by the chairman and clerk of said committee, except one order for $ signed by the chairman of said committee, and two of said orders, one for $25,000 and one for $12,000, were also signed by Robert Leach, a member of said committee, and one of said orders being another order for $25,000 of said bonds, dated April 1st, 1871, was not filed until 12th Feb., 1872, when same was filed nunc pro tunc, as well as upon the orders of the said board set forth in said plea, under date of March 31st, A. D. 1871, and on the 10th day
142 of June, A. D. 1871, and by the said committee, with the consent of the railroad co., sold to the plaintiff during the year A. D. 1871, for value, and the proceeds of all of said bonds, except a small sum, not exceeding $2,000, now in the hands of said committee, have been expended towards the construction of the said railroad through the said county on the line called for in the conditions in said subscriptions under the supervision of said committee, who have from time to time submitted reports of their doings to said board, and the same have been approved by said board.

And the plaintiff in fact saith he is an innocent holder of said bonds and coupons for value before due, and without any notice of any illegality, irregularity, or informality in the making, issuing, or delivery thereof, and plaintiff denies that election notices of the said elections mentioned in the plea were not duly posted as required by law.

And he says that under the facts and traverses in this replication set forth, the said defendant is estopped to deny that the said conditions in said subscriptions were complied with, and is estopped from claiming that any irregularity or informality occurred in the making, issu-
143 ing, and delivery thereof, and he pleads and relies upon said facts as an estoppel which prevents the defendants from aver'ing and proving that said conditions were not complied with before the issuance of said bonds and coupons, and from aver'ing and proving that any irregularity or informality occurred in the making, issuing, and delivery of said bonds and coupons. All of which the plaintiff is ready to verify. Wherefore he prays judgment, &c.

And for replication to the third plea of the defendant herein filed on the 11th day of February, A. D. 1873, plaintiff says precludi non, because he says:

That before the said bonds and coupons in the said first count mentioned were issued, or any of them, the line of said railroad had been located through said county upon the line called for in the said order for election, and subscription of $25,000 to the capital stock of the Kankakee and Illinois River Railroad Co., and the said subscription of $25,000 had been accepted by the said railroad company before the said consolidation, and was a binding contract on said county; and the said board of supervisors, acting in the name of said county, then had
144 and ever since hath taken part and voted in the affairs of said company and in the affairs of the consolidated company since said consolidation as a stockholder.

And the plaintiff in fact saith, that before said bonds and coupons were issued and delivered, the said consolidated railroad co. had made a bona-fide contract with responsible parties for all necessary iron for laying the same and operating said railroad through said county, and before any of said bonds were issued and delivered the said contract, information, and certain letters of advice as to the responsibility of the

parties signing the same were submitted to the said committee appointed by said board under said order for subscription, and a majority of said committee, in good faith, then decided that said contract was a compliance with the condition in the said $25,000 subscription as to ironing and operating the road in said county, and decided that all the conditions in said subscription had been complied with, and on the 29th day of November, A. D. 1870, filed the resolution in writing of said committee with said county clerk, authorizing him to sign the railroad bonds of said county to the amount of $25,000, and place the same in the
145 hands of said committee to be sold, and appropriate the proceeds in accordance with the order of said board.

And the said board of supervisors did, on the 20th day of September, A. D. 1870, adopt and spread upon their record a resolution that the chairman thereof was authorized and instructed to sign the bonds of the county to the amount of $25,000, and place the same in the hands of the committee theretofore appointed by the board, to be by them delivered to the president and directors of the Kankakee and Illinois River Railroad Co. in amounts and at such times as might be necessary in constructing said road through Putnam County, subject to all conditions upon which the subscriptions to the stock of said c'p'y were made by the county; and upon further condition that the proceeds of said bonds should be expended in building said road through said county.

And said resolution of the board remaining unrescinded, and said resolution of said committee being filed as aforesaid, the said clerk and chairman, on the 29 day of November, A. D. 1870, signed, sealed, issued, and delivered said twenty-five bonds to the said committee, with
146 the coupons attached, signed by the said clerk, and received the said certificate of stock therefor.

And the said committee afterwards, to wit, on said day, at said district, through and with the consent of said railroad company, sold and delivered the said bonds and coupons to the plaintiff for value.

And the plaintiff in fact saith that the proceeds of the said bonds were used under the supervision of said committee in constructing said road through said county, and the committee reported their doings to said board, and the same was approved by said board, as the same appears of record on the 31st day of March, A. D. 1871.

And plaintiff denies allegations in plea that no notices of said election to subscribe the $25,000 stock were posted or given.

And plaintiff in fact saith that on the 26th day of September, A. D. 1871, the said board levied a tax on all the taxable property of the county assessed for that year to pay the interest on said bonds and others issued to the same road to and in the construction thereof, and also
147 borrowed money and paid the coupons attached to said twenty-five bonds due the 25th day of October, A. D. 1871, issued as aforesaid on the 29th day of November, A. D. 1870, and bearing date the 25th day of October, A. D. 1870.

And the plaintiff in fact saith he is an innocent holder of said bonds and coupons for value before due, and without any notice at the time he purchased same of any illegality, irregularity, or informality in the making, issuing, or delivery thereof.

And he says that the said defendant is estopped to deny that the said conditions in said subscription were complied with, and is estopped from claiming that any irregularity or informality in the making, issuing, and delivery thereof. And he pleads said facts as an estoppel which prevents the defendant from aver'ing and proving that said conditions were not complied with, and from aver'ing and proving that any irregu-

larity or informality intervened in the execution and delivery of said bonds and coupons. And all this he is ready to verify.

Wherefore he prays judgment, &c.

And for replication to the 4th plea of the defendant herein filed on the 1th day of February, 1873, plaintiff saith precludi non, be-
148 cause he saith, that before the said bonds and coupons in the said first count mentioned were issued, the line of said railroad had been located through said county, upon the line called for, in the said conditions to the said subscription of twenty-five thousand dollars, therein mentioned. And the said subscription of twenty-five thousand dollars to the capital stock of the Kankakee and Illinois River Railroad Company had been accepted by the said railroad company before the said consolidation, and was a binding contract on said county, and the said board of supervisors, in the name of the said county, then had and ever since hath taken part and voted in the affairs of said company, and in the affairs of the consolidated company, since said consolidation, as a stockholder.

And the plaintiff in fact saith that before said bonds & coupons were issued and delivered, the said consolidated railroad company had made a bona-fide contract with responsible parties for all necessary iron for laying the same, and operating said railroad through said county. And before any of said bonds were issued and delivered, the said contract and certain letters of advice and other information as to the responsibility of the parties signing same were submitted to the said committee appointed by said board under said order
149 for subscription; and a majority of said committee in good faith then decided that said contract was a compliance with the condition in the said subscription of twenty-five thousand dollars aforesaid as to ironing and operating the said road in said county, and decided that all the conditions in said subscription had been complied with, and afterwards, on the 29th day of November, A. D. 1875, filed the resolution in writing of said committee with said county clerk, authorizing him to sign the railroad bonds of said county to the amount of twenty-five thousand dollars, and place the same in the hands of said committee to be sold, and appropriate the proceeds in accordance with the order of said board. And the said order of the board of supervisors, made on the 20th day of September, A. D. 1870, remaining in full force, the said clerk and chairman of said board on the 29th day of November, A. D. 1870, signed, sealed, issued, and delivered said twenty-five bonds to the said committee, with the coupons attached, signed by the said clerk, and received the said certificate of stock therefor.

And the said committee afterwards, to wit, on said day at said district, through and with the consent of said railroad company, sold and delivered the said bonds and coupons to plaintiff for value.

150 And the said plaintiff in fact saith that the proceeds of the said bonds were used under the supervision of the said committee in constructing said road through said county, and the committee reported their doings to said board, and the same was approved by the said board, as the same appears of record on the 31st day of March, A. D. 1871.

And the plaintiff in fact saith that on the 26th day of September, A. D. 1871, the said board levied a tax on all taxable property of the county assessed for that year to pay the interest on said bonds and other bonds issued to aid in the construction of said road of said consolidated railroad co. under such subscriptions, and also borrowed

money and paid the coupons attached to said twenty-five bonds due on the 25th day of October, A. D. 1871.

And the plaintiff in fact saith he is an innocent holder of said bonds and coupons for value before due, and without any notice at the time he purchased the same of any illegality, irregularity, or informality in the making, issuing, or delivery thereof.

And he says that the said defendant is estopped to deny that the said conditions in said subscription were complied with before the issuance and delivery of the said bonds, and is estopped from
151 claiming that any irregularity or informality existed in the making, issuing, and delivery thereof. And he pleads said facts as an estoppel which prevents the defendant from averring or proving that said conditions were not complied with before the issuance and delivery of said bonds and coupons, and from averring and proving that any irregularity or informality occurred in the making, issuing, and delivery of the said bonds and coupons; all of which the plaintiff is ready to verify. Wherefore he prays judgment, &c.

And for replication to the fifth plea of the defendant herein filed on the 11th day of February, A. D. 1873, plaintiff saith precludi non, because he saith that before the said bonds and coupons in the said second, third, and seventh counts in the declaration mentioned were issued, the line of the said railroad had been located through the said county on the line called for in the order mentioned in the said plea of the defendants herein, subscribing $75,000 to the capital stock of the Kankakee and Illinois River Railroad Company, and the said subscription had been accepted by said railroad co. before the said consolidation mentioned in said plea, and was a building-contract on
152 said county, a majority of the legal voters of said county having voted in favour of such subscription upon due notice and under the order of the board of supervisors of said county, made on the 4th day of June, A. D. 1869, and which order is set out in said plea as adopted on that day; and ever since the said board of supervisors, in the name of said county, hath taken part and voted in the affairs of said company, and in the affairs of the consolidated company since the said consolidation, as a stockholder.

And the plaintiff in fact said that before the said bonds and coupons in said counts mentioned were issued and delivered, the said consolidated railroad co. had made a bona-fide contract with responsible parties for all necessary iron for laying the same and operating said railroad through said county, and before any of said bonds and coupons were issued, the said contract and certain information and letters of advice as to the responsibility of the parties signing the same were submitted to the said committee appointed by said board to superintend the issuance of said bonds, and the majority of said committee had in good faith decided that the said contract was a compliance with the conditions of said subscription of seventy-five thousand dollars to the capital stock of said Kankakee and Illinois River Railroad Co., and
153 that all the conditions in said subscription had been complied with, and that on the 29th day of November, A. D. 1870, filed the resolution, in writing, of said committee, signed by the chairman and clerk of said committee, with said county clerk, authorizing him to sign the railroad bonds of said county to the amount of $25,000, and place the same in the hands of said committee to be sold, and appropriate the proceeds in accordance with the order of said record; and the said order of the board made on the 25th day of September, A. D. 1870, remaining in full force, the county clerk and chair-

man of said board signed, sealed, and delivered to said committee the $25,000 in bonds of said county to pay the said $25,000 subscription to the stock of said co. mentioned in the plea, and the same were sold to the plaintiff for value, and the proceeds applied in building the said railroad through said county under the supervision of said committee, who made report of their proceedings to said board, and the same was approved on the 31st day of March, A. D. 1871.

And the said committee, by a majority thereof, having requested the clerk and chairman to issue and deliver to them the $25,000 in
154 bonds ordered to be issued by said board on the 31st day of March, A. D. 1871, (no written order therefor then being filed by the committee, but the same was, on the 27th day of February, A. D. 1872, filed nunc pro tunc, signed by the chairman and clerk of said committee,) the said chairman & clerk, on the 4th day of April, A. D. 1871, signed, sealed, issued, and delivered to the said committee the said bonds and coupons, (the coupons being signed by the clerk on the said 2nd, 3rd, and 7th counts mentioned.)

And the plaintiff in fact saith that ever since the 29 November, A. D. 1870, a copy of said contract for iron, and for laying same, and operating said road, and a copy of said letters of advice submitted to said committee were on file with the office of the clerk of said board, and the contents and effects of which were well known to said board at the time said order of the 31 day of March, A. D. 1871, was made; and said board well knew said road was being built, said bonds issued, and the proceeds being expended on the road in said county, upon the decision of said committee that the conditions in said subscriptions had been complied with, and said board approved the report of said committee as aforesaid.

And the plaintiff in fact saith that on the 26th day of September, A. D. 1871, the said board levied a tax on all the taxable prop-
155 erty in said county assessed for that year to pay the interest on the said bonds issued to aid in the construction of said road of said consolidation co. by said county.

And the plaintiff in fact saith that afterwards, to wit, on the 4th day of April, A D. 1871, at said district, the said committee, through and with the consent of the said railroad co., sold and delivered the said bonds and coupons attached, to the plaintiff for value, and the proceeds thereof were used under the supervision of said committee in constructing the said railroad through said county on the said line so located.

And the plaintiff in fact saith he is an innocent holder and purchaser of said bonds and coupons for value before maturing, without any notice at the time he purchased of any illegality or irregularities in the making, issuing, and delivery thereof.

And he says that the said defendant is estopped from denying that the said conditions in said subscription of $75,000 to the capital stock of said railroad co. were complied with before the issuance and delivery of the said bonds, and is estopped from claiming that any irregularity or informality existed in the making, issuing, and delivery of said bonds and coupons, and he pleads said facts as an estoppel which prevents
156 the defendant from averring or proving that said conditions were not complied with before the issuance and delivery of said bonds, and from averring and proving that any irregularity or informality occurred in the making, issuing, and delivery thereof.

All of which the plaintiff is ready to verify. Wherefore he prays judgment, &c.

And as to defendant's second plea, filed on the 11th day of Feb-

ruary, A. D. 1873, wherein it puts itself upon the county, plaintiff doth the like.

BANGS & SHAW,
Att'ys for Plaintiff.

157 UNITED STATES OF AMERICA,
State of Illinois :

Circuit court northern district Illinois, December term, A. D. 1872.

GEORGE NUGENT
v.
THE BOARD SUPERVISORS PUTNAM Co., Illinois.

And for a second replication in this behalf to the first plea of the defendant, filed on the 11th day of February, A. D. 1873, plaintiff says precludi non, because he saith that before said bonds were issued, or any of them, that the line of said railroad had been located through said county, upon the line called for in said orders for election and subscriptions, and each of said subscriptions had been accepted by the railroad company before the said consolidation, and was a binding contract on said county, and the said board of supervisors, acting in the name of said county, then had and hath ever since taken part in and voted in the affairs of said company, and in the affairs of the consolidation co. since the said consolidation, as a stockholder, and consented to said consolidation.

And the plaintiff in fact saith that before any of said bonds were issued and delivered, the said consolidated railroad co. had made
158 a bona-fide contract with responsible parties for all necessary iron, for laying the same, and operating said railroad through said county, and that before any of said bonds were issued and delivered the said contract and certain letters of advice and information as to the responsibility of the parties signing the same was submitted to the said committee, a majority of whom, in good faith, decided that said contract was a compliance with the condition in said subscriptions as to the ironing and operating the road, and decided that all of said conditions had been complied with, and on the 29th day of November, A. D. 1870, filed the resolution in writing of said committee, signed by Williamson Durley, as chairman, and by Joshua L. Mills, as clerk, of said committee, dated on said day, with the county clerk of said county, authorizing him to sign the Putnam Co. railroad bonds to the amount of twenty-five thousand dollars, and place the same in the hands of said committee, to be sold and appropriate the proceeds in accordance with the order of said board.

Whereupon the said clerk of said county on said day signed, sealed, (the same being also signed by the chairman of said board,) and delivered said bonds and coupons to the said committee, the coupons being signed by said clerk, and received the said certificate of stock therefor.

159 And the said committee afterwards, during the year A. D. 1870, through the said railroad officers, and with their consent, sold and delivered the said bonds and coupons to the plaintiffs for value.

And the other bonds and coupons in the said plea mentioned were afterwards from time to time issued and delivered to the said committee, upon the order of a majority of said railroad committee, the written or-

ders therefor being signed by the chairman and clerk of said committee, except one order for 00, signed by the chairman of said committee, and two of said orders, one for $25,000, and one for $12,000, were also signed by Robert Leach, a member of said committee, and one of said orders, being another order for $25,000, of said bonds, dated April 1st, 1871, was not filed until 12th Feb., 1872, when same was filed nunc pro tunc, as well as upon the orders of the said board set forth in said plea, under date of March 31st, A. D. 1871, and on the 10th day of June, A. D. 1871, and by the said committee, with the consent of the railroad co., sold to the plaintiff during the year A. D. 1871, for value.

And the proceeds of all of said bonds, except a small sum not exceeding $2,000, now in the hands of said committee, have been expended towards the construction of the said railroad through the said county
160 on the line called for in the conditions in said subscriptions under the supervision of said committee, who have from time to time submitted reports of their doings to said board, and the same have been approved by said board.

And the plaintiff in fact saith he is an innocent holder of said bonds and coupons for value before due, and without any notice of illegality, irregularity, or informality in the making, issuing, or delivery thereof. And plaintiff denies that election notices of the said elections mentioned in the plea were not duly posted as required by law.

All which the plaintiff is ready to verify. Wherefore he pray judgement, &c.

And for a second replication to the third plea of the defendants herein filed on the 11th day of February, A. D. 1873, plaintiff says precludi non, because, he says:

That before the said bonds and coupons in the said first count mentioned were issued, or any of them, the line of said railroad had been located through said county upon the line called for in the said order for election and subscription of $25,000 to the capital stock of the Kankakee and Illinois River Railroad Co., and the said subscription of $25,000 had been accepted by the said railroad company before
161 the said consolidation, and was a binding contract on said county. And the said board of supervisors, acting in the name of said county, then had, and ever since hath, taken part and voted in the affairs of said company and in the affairs of the consolidated company since said consolidation as a stockholder.

And the plaintiff in fact saith that before said bonds and coupons were issued and delivered, the said consolidated railroad co. had made a bona fide contract with responsible parties for all necessary iron, for laying the same, and operating said railroad through said county, and before any of said bonds were issued and delivered, the said contract, information, and certain letters of advice as to the responsibility of the parties signing the same, were submitted to the said committee appointed by said board under said order for subscription, and a majority of said committee in good faith then decided that said contract was a compliance with the condition of the said $25,000 subscription as to ironing and operating the road in said county, and decided that all the conditions in said subscription had been complied with, and on the 29th day of November, A. D. 1870, filed the resolution in writing of said committee with said county clerk, authorizing him to sign the railroad bonds
162 of said county to the amount of $25,000, and place the same in the hands of said committee, to be sold, and appropriate the proceeds in accordance with the order of said board.

And the said board of supervisors did, on the 20th day of September,

A. D. 1870, adopt and spread upon their record a resolution that the chairman thereof was authorized and instructed to sign the bonds of the county to the amount of $25,000, and place the same in the hands of the committee theretofore appointed by the board, to be by them delivered to the president and directors of the Kankakee and Illinois River Railroad Co., in amount and at such times as might be necessary in constructing said road through Putnam County, subject to all conditions upon which the subscriptions to the stock of said company mere made by the county.

And upon further condition that the proceeds of said bonds should be expended in building said road through said county.

And said resolution of the board remaining unrescinded, and said resolution of said committee being filed as aforesaid, the said clerk and chairman, on the 29th day of November, A. D. 1870, signed, sealed, issued, and delivered said twenty-five bonds to the said committee, with the coupons attached, signed by the said clerk, and received the said certificate of stock therefor.

163 And the said committee afterwards, to wit, on said day, at said district, through and with the consent of said railroad company, sold and delivered the said bonds and coupons to the plaintiff for value.

And the plaintiff in fact saith that the proceeds of the said bonds were used under the supervision of said committee in constructing said road through said county, and the committee reported their doings to said board, and the same was approved by said board, as the same appears of record on the 31st day of March, A. D. 1871.

And plaintiff denies allegations in plea that no notices of said election to subscribe the $25,000 stock were posted or given.

And plaintiff in fact saith that on the 26th day of September, A. D. 1871, the said board levied a tax on all the taxable property of the county assessed for that year to pay the interest on said bonds and others issued to the same road, to aid in the construction thereof, and also borrowed money and paid the coupons attached to said twenty-five bonds due the 25th day of October, A. D. 1871, issued as aforesaid on the 29th day of November, A. D. 1870, and bearing date the 25th day of October, A. D. 1870.

164 And the plaintiff in fact saith he is an innocent holder of said bonds and coupons for value before due, and without any notice at the time he purchased same of any illegality, irregularity, or informality in the making, issuing, or delivery thereof.

And all this he is ready to verify; wherefore he prays judgement, &c.

And for a second replication to the fourth plea of the defendant herein, filed on the 11th day of February, 1873, plaintiff saith precludi non, because he saith that before the said bonds and coupons in the said first count mentioned were issued, the line of said railroad had been located through said county upon the line called for in the said conditions to the said subscription of twenty-five thousand dollars therein mentioned, and the said subscription of twenty-five thousand dollars to the capital stock of the Kankakee and Illinois River Railroad Company had been accepted by the said railroad company before the said consolidation, and was a binding contract on said county, and the said board of supervisors, in the name of the said county, then had and ever since hath taken part and voted in the affairs of said company and in the affairs of the consolidated company since said consolidation as a stockholder.

165 And the plaintiff in fact saith that before said bonds and cou-

pons were issued and delivered, the said consolidated railroad company had made a bona-fide contract with responsible parties for all necessary iron for laying the same and operating said railroad through said county, and before any of said bonds were issued and delivered, the said contract and certain letters of advice and other information as to the responsibility of the parties signing the same were submitted to the said committee appointed by said board under said order for subscription, and a majority of said committee in good faith then decided that said contract was a compliance with the condition in the said subscription of twenty-five thousand dollars aforesaid as to ironing and operating the said road in said county, and decided that all the conditions in said subscription had been complied with, and afterwards, on the 29th day of November, A. D. 1870, filed the resolution in writing of said committee with said county clerk, authorizing him to sign the railroad bonds of said county to the amount of twenty-five thousand dollars, and place the same in the hands of said committee to be sold, and appropriate the proceeds in accordance with the order of said board.

And the said order of the board of supervisors, made on the 20th
166 day of September, A. D. 1870, remaining in full force, the said clerk and chairman of said board, on the 20th day of November, A. D. 1870, signed, sealed, issued, and delivered said twenty-five bonds to the said committee, with the coupons attached, signed by the said clerk, and received the said certificate of stock therefor.

And the said committee afterwards, to wit, on said day, at said district, through and with the consent of said railroad company, sold and delivered the said bonds and coupons to plaintiff for value.

And the said plaintiff in fact saith that the proceeds of the said bonds were used under the supervision of the said committee in constructing said road through said county, and the committee reported their doings to said board, and the same was approved by the said board, as the same appears of record, on the 31st day March, A. D. 1871.

And the plaintiff in fact saith that on the 26th day of September, A. D. 1871, the said board levied a tax on all taxable property of the county assessed for that year, to pay the interest on the said bonds and other bonds issued to aid in the construction of said road of said consolidated railroad co., under said subscriptions, and also borrowed money and paid the coupons attached to said twenty-five bonds
167 due on the 25th day of October, A. D. 1871.

And the plaintiff in fact saith he is an innocent holder of said bonds and coupons for value before due, and without any notice at the time he purchased the same of any illegality, irregularity, or informality in the making, issuing, or delivery thereof.

All of which the plaintiff is ready to verify; wherefore he prays judgement, &c.

And for a second replication to the fifth plea of the defendant herein, filed on the 11th day of February, A. D. 1873, plaintiff saith precludi non, because he saith that before the said bonds and coupons in the said second, third, and seventh counts in the declaration mentioned were issued, the line of the said railroad had been located through the said county on the line called for in the order mentioned in said plea of the defendants herein, subscribing $75,000 to the capital stock of the Kankakee and Illinois River Railroad Company, and the said subscription had been accepted by said railroad co. before the said consolidation mentioned in said plea, and was a binding contract on said county, a majority of the legal voters of said county having voted in favour of such subscription upon due notice and under the order of the board of

168 supervisors of said county, made on the 4th day of June, A .D. 1869, and which order is set out in said plea as adopted on that day, and ever since the said board of supervisers, in the name of said county, hath taken part and voted in the affairs of the consolidated company since the said consolidation as a stockholder.

And the plaintiff in fact saith that before the said bonds and coupons in said counts mentioned were issued and delivered, the said consolidated railroad co. had made a bona-fide contract with responsible parties for all necessary iron, for laying the same, and operating said railroad through said county, and before any of said bonds and coupons were issued the said contract and certain information and letters of advice as to the responsibility of the parties signing the same were submitted to the said committee appointed by said board to superintend the issuance of said bonds, and the majority of said committee had, in good faith, decided that the said contract was a compliance with the conditions in said subscription of twenty-five thousand dollars to the capital stock of said Kankakee and Illinois River Railroad Co., and that all the conditions in said subscription had been complied with, and, on the 29th day of November, A. D. 1870, filed the resolu-

169 tion in writing of said committee, signed by the chairman and clerk of said committee, with said county clerk, authorizing him to sign the railroad bonds of said county to the amount of $25,000, and place the same in the hands of said committee to be sold, and appropriate the proceeds in accordance with the order of said board; and the said order of the board, made on the 25th day of September, A. D. 1870, remaining in full force, the county clerk and chairman of said board signed, sealed, and delivered to said committee the $25,000 in bonds of said county to pay the said $25,000 subscription to the stock of said co., mentioned in the plea, and the same were sold to the plaintiff for value, and the proceeds applied in building the said railroad through said county under the supervision of said committee, who made report of their proceedings to said board, and the same was approved on the 31st day of March, A. D. 1871.

And the said committee, by a majority thereof, having requested the clerk and chairman to issue and deliver to them the $25,000 in bonds, ordered to be issued by said board on the 31st day of March, A. D. 1871, (no written order therefor then being filed by the committee, but the same was, on the 27th day of February, A. D. 1872, filed

170 nunc pro tunc, signed by the chairman and clerk of said committee,) the said chairman and clerk, on the 4th day of April, A. D. 1871, signed, sealed, issued, and delivered to the said committee the said bonds and coupons, the coupons being signed by the clerk in said 2nd, 3rd, and 7th counts mentioned.

And the plaintiff in fact saith that, ever since the 29th November, A. D. 1870, a copy of said contract for iron and for laying same, and for operating said road, and a copy of said letters of advice submitted to said committee, were on file with the office of the clerk of said board, and the contents and effects of which were well known to said board at the time said order of the 31st day of March, A. D. 1871, was made; and said board well knew said road was being built, said bonds issued, and the proceeds being expended on the road in said county upon the decision of said committee, that the conditions, in said subscriptions, had been complied with, and said board approved the report of said committee as aforesaid.

And the plaintiff in fact saith that, on the 26th day of September, A. D. 1871, the said board levied a tax on all the taxable property in said

county assessed for that year, to pay the interest on the said bonds and other bonds issued to aid in the construction of said road of said consolidated co. by said county.

And the plaintiff in fact saith that afterwards, to wit, on the 4th day of April, A. D. 1871, at said district, the said committee, through and with the consent of the said railroad co., sold and delivered the
171 said bonds and coupons attached to the plaintiff for value, & the proceeds thereof were used under the supervision of said committee in constructing the said railroad through said county, on the said line so located.

And the plaintiff in fact saith he is an innocent holder and purchaser of said bonds and coupons for value before maturity, without any notice at the time he purchased of any illegality, irregularity, or informality in the making, issuing, and delivery thereof.

All of which the plaintiff is ready to verify; wherefore he prays judgment, &c.

And as to defendant's second plea, filed on the 11th day of February, A. D. 1873, wherein it puts itself upon the country, plaintiff doth the like.

BANGS AND SHAW,
Attorneys for Plaintiff.

(Endorsed:) Filed Feb'y 13th, 1873. W'm H. Bradley, cl'k.

172 Afterwards, to wit, on the 17th day of February, A. D. 1873, said defendant, by its attorney, filed in said clerk's office its demurrer to plaintiff's replications in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer to replications.

UNITED STATES OF AMERICA,
State of Illinois:

Circuit court of the U. S., northern district of Illinois. To December term, 1872.

THE BOARD OF SUPERVISORS OF PUTNAM COUNTY, Illinois, def'ts, *a'ts* GEORGE NUGENT, PLAINTIFF. } Assumpsit.

And now again comes the said defendant, and says that the said replications & each of them of plaintiff pleaded to defendant's first plea, (filed the 11th day of February, 1870,) in manner & form as pleaded by said plaintiff, and the matters therein contained, are not sufficient in law for plaintiff to have or maintain his aforesaid action against defendant, & that defendant is not bound by law to answer the same respectively; and this defendant is ready to verify; wherefore, &c.

173 And defendant shows to the court here, the following special cause of demurrer to each of said replications, that is to say:

1st. That each of the allegations of said replication is a departure from the allegations of said declaration.

2nd. That said replication is argumentative.

3d. That the said replication ought to conclude to the country.

4th. That by the law, plaintiff ought to join the issue tendered by said plea or demur thereto.

5th. That matters traversed by said replication are not by law traversable in the manner & form as pleaded in said replication.

6th. That the new matter alleged in said replication cannot properly be alleged in manner & form as in said replication the same is alleged, but should have been put in the declaration.

7th. That affirmative matter pleaded in said replication is pleaded in a negative form, when by law it should be pleaded only in an affirmative form.

T. LYLE DICKEY,
for Defendant.

174 And as to the replications severally pleaded by plaintiff to defendant's third, fourth, & fifth pleas, filed on the 11th day of February, 1873, & as to each of said replications respectively, and the matter in each of said replications respectively contained, defendant says each and every of said replications, & the matters in each respectively in manner & form as pleaded, are not sufficient in law for plaintiff to maintain his action against defendant by reason of the matters in the said several counts to which said pleas respectively are pleaded, and that as to each of said replications, defendant is not bound by law to answer the same.

And defendant shows to the court here the following special causes of demurrer to each of said replications, that is to say:

1st. That each of the allegations of said replications respectively is a departure from the allegations of that part of the declaration to which said pleas respectively replied to are respectively pleaded.

2nd. That each of said replications respectively is argumentative.

175 3rd. That each of said replications ought to conclude to the country.

4th. That by law plaintiff ought to join the issue tendered by each of said pleas, or to demur to the same.

5th. That the matters alleged & the matters traversed in each of said replications respectively, cannot properly by law be alleged or traversed in manner & form as the same are alleged & traversed in said replications respectively.

6th. That in each of said replications respectively, matter affirmative in its nature is pleaded in a negative form, when by law it should be pleaded only in an affirmative form.

T. LYLE DICKEY,
For Defendant.

(Endorsed:) Filed Feb'y 17th, 1873. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 27th day of March, in the March term, A. D. 1873, of said court, in the record of the proceedings thereof
176 in said entitled cause, is the following entry, to wit:

Demurrer taken under advisement.

GEORGE NUGENT
v.
THE BOARD OF SUPERVISORS OF PUTNAM COUNTY. } Assumpsit.

Now come the parties, by their attorneys, and now comes on to be

heard the demurrer of the defendant to the replications filed herein, and after hearing the arguments of counsel, the court takes the same under advisement.

Afterwards, to wit, on the 6th day of August, in the July term, A. D. 1873, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Demurrer sustained.

GEORGE NUGENT
v.
BOARD OF SUPERVISORS OF PUTNAM COUNTY. } Assumpsit.

Now come the parties by their attorneys, and the court having considered, and being now fully advised on the dumurrer of the defendant to the plaintiff's replication, sustains the same.

177 Afterwards, to wit, on the 18th day of August, in the July term, A. D. 1873, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Nolle pros. as to all but 1st count & judg't.

GEORGE NUGENT
v.
BOARD OF SUPERVISORS OF PUTNAM COUNTY. } Assumpsit.

Now comes the plaintiff, by his attorney, and by leave of the court enters a nolle prosequi as to all the *the* counts in his declaration except the first. And the court having heretofore sustained the demurrer of the defendant to the plaintiff's replication, the plaintiff, by his attorney, failing to make further answer, and electing to abide by his replications to the pleas of the defendant filed to said first count:

It is thereupon considered and adjudged by the court that the defendant go hence without day, and also that said defendant have and recover of the plaintiff the costs and charges herein, taxed at dollars and cents, and that execution issue therefor.

178 Afterwards, to wit, on the 4th day of September, A. D. 1873, said plaintiff, by his attorney, filed in said clerk's office his bond in said entitled cause, which said bond, together with power of attorney, is in words and figures following, to wit:

Power of attorney & bond.

Know all men by these presents that I, George Nugent, of Philadelphia, Pa., plaintiff in a certain suit in assumpsit against the board of supervisors of Putnam County, Illinois, pending in the circuit court of the United States, in the northern district of Illinois, do make, constitute, and appoint Thomas M. Shaw, of Lacon, Illinois, my true and lawful attorney in fact to sign, seal, and deliver for me and in my name, any and all necessary papers and bonds necessary and proper to be filed in said cause, to procure the review of the final decision and judgment of the said circuit court in said cause by the Supreme Court of the United

States, to that end ratifying and confirming all that my said attorney has or may do in that behalf.

179 Given under my hand and seal this 15th day of August, A. D. 1873.

GEORGE NUGENT, [SEAL.]

Attest:
W'M P. SHEFFIELD.
W'M HAMILTON.

STATE OF RHODE ISLAND,
County of Newport, ss:

On this day appeared before me, a notary public and a commissioner for U. S. circuit court in and for said county and State, George Nugent, to me well known as the same person named in the within power of attorney, as having executed the same and acknowledged the execution and delivery thereof for the purposes therein mentioned.

Witness my hand and seal of office at my office in said county and State, this fifteenth day of August, A. D. 1873.

[NOTARIAL SEAL.] WILLIAM P. SHEFFIELD,
Notary Public & Commissioner for the United States Circuit Court.

180 United States circuit court, northern district of Illinois.

GEORGE NUGENT
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County, Illinois.

Know all men by these presents that we, George Nugent, of Philadelphia, Pennsylvania, and Thomas M. Shaw, of Lacon, Illinois, are held and firmly bound unto the board of supervisors of Putnam County, Illinois, in the penal sum of five hundred dollars, to be paid to the said board of supervisors and their successors in office, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this 22d day of August, A. D. 1873.

Whereas the said George Nugent have prosecuted a writ of
181 error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the said circuit court: Now, therefore, the condition of this obligation is such that if the above-named George Nugent shall prosecute their said writ of error to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

GEORGE NUGENT, [SEAL.]
By THOMAS M. SHAW,
His Att'y in fact.
THOMAS M. SHAW. [SEAL.]

Approved:

H. W. BLODGETT, *Judge.*

STATE OF ILLINOIS,
Marshall County, ss :

U. S. circuit court, northern dist. Ill's.

GEORGE NUGENT
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County, Illinois.

182 T. M. Shaw, the surety on the bond attached, being duly sworn, on oath says he is a resident of Lacon, in said county, and that he is the owner of property, real and personal, in said State to the amount of five thousand dollars and more, unincumbered, over and above all his debts and exemption from sale on execution.

T. M. SHAW.

Subscribed and sworn to before me this 1st day of September, 1873.
[NOTARIAL SEAL.] JOSEPH E. ONG,
Notary Public.

(Endorsed:) Filed September 4, 1873. W'm H. Bradley, clerk.

183 NOTRHERN DISTRICT OF ILLINOIS, *ss :*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein George Nugent is plaintiff and the board of supervisors of Putnam County defendant, as appears from the records of said court remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of Chicago, in said district, this 29th day of September, A. D. 1873, the 98th year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

184 No opinion has been prepared or filed by the court in the annexed case of George Nugent vs. Board of Supervisors of Putnam County.

When the case was decided, however, a short-hand reporter was present and took down in substance the language of the judge, (Blodgett,) which was by the reporter handed to the editor of the Chicago Legal News, by whom it was published. That publication I herewith annex, having submitted the same to Judge Blodgett, who states that it is a substantial copy of his opinion.

Chicago, Oct. 8th, 1873.

W'M H. BRADLEY, *Clerk.*

185 CHICAGO LEGAL NEWS,
Saturday, August 23, 1873.

THE COURTS.

Our thanks are due T. Lyle Dickey, of the Ottawa bar, for the following opinion :

U. S. circuit court, N. D. Ill.

GEORGE NUGENT
v.
THE SUPERVISORS OF PUTNAM COUNTY. } Assumpsit.

Effect of consolidating railroad corporations on subscriptions by county to one of the consolidating companies; bonds issued to consolidated company void.

A vote of the people of the county was had on the 10th of July, 1869, and the 8th of February, 1870, upon the proposition to subscribe to the capital stock of the Kankakee and Illinois River Railroad Company, a corporation possessing the power to construct and maintain a line of road between certain termini in the State of Illinois, with a capital limited to the cost of construction. The bonds in question were issued after the Kankakee and Ill. River R. R. Co. had merged itself, by articles of consolidation, into another corporation, now known as the Plymouth, Kankakee and Pacific R. R. Co., a road having control of a different enterprise from that of the original corporation, possessing a different capital stock, and governed by a different board of directors, elected upon a different basis, with different termini of the road: held, that these bonds were illegal and void; that they were issued by the board of supervisors without the power being granted to them for that purpose; that the vote of the people authorized the county authorities to issue its bonds to the K. & Ill. River R. R. Co., and they were in fact issued to another company without a vote. The fact that the bonds bear upon their face the statement that they were issued in pursuance of law, and for the stock of the K. & Ill. River R. R. Co., cannot be held to clothe the county authorities with power to make the issue, as the assertion is untrue.—ED. LEGAL NEWS.

The opinion of the court was delivered by Blodgett, J.

This is an action of assumpsit on ninety coupons issued by the county of Putnam for the interest on certain bonds issued by said county. The complainant declares on these coupons, to which the defendant pleads several pleas denying the validity of the bonds and coupons, to which the plaintiff replies, setting up certain matters by which he claims that the validity of the bonds is fully established, and also that the defendant is estopped from denying the validity of the bonds.

The material facts eliminated from the pleadings appear to be these: that on and prior to the 4th of June, 1869, a corporation existed in this State under a special charter, known by the corporate name of the Kankakee and Illinois River Railroad Company, with authority to construct and maintain a railroad from the eastern line of this State, by way of Momence, Kankakee, Dwight, and Streator, to Bureau Junction, in Bureau County, with a capital of one hundred thousand dollars, subject to be increased to such an amount as should be necessary to complete the road of the company. And on the 4th day of June, 1869, the board of supervisors of the county of Putnam, through which the proposed line was to pass, ordered an election to be held at the usual place for holding elections in said county, to determine whether said county should subscribe for seventy-five thousand dollars of the stock of said company, conditioned that said stock should be paid for in the bonds of said county, bearing interest at ten per cent. per annum, payable annually, provided said road should be located and constructed through or within

one-half mile of the corporate limits of the town of Hennepin, in said county.

The election was held, resulting in favor of said subscription; and on the 4th of January, 1870, another election was called by said board, to be held on the 8th day of February, 1870, to determine whether said county would subscribe for twenty-five thousand dollars of the stock of said railroad company, payable in the bonds of said county, on the condition that said railroad should be located within one-half mile of the corporate limits of the town of Hennepin, these bonds to bear interest at ten per cent. per annum.

This election was held, and resulted in favor of said proposition.

After said election of the 10th day of July, 1870, the said board of supervisors adopted a resolution, stating that said subscription of seventy-five thousand dollars "is hereby made in pursuance of said election, subject to the following conditions: That a committee of five persons be hereafter appointed by this board, whose duty it shall be to direct the issue of said bonds, and protect the interests of said county, and discharge such other duty as shall be devolved upon them by said board, and the bonds of said county shall be issued on said subscription in sums of not less than five hundred dollars, payable in annual instalments of not less than ten thousand dollars, five years after the date of issue, bearing interest at the rate of ten per cent. per annum, payable annually, and that the clerk of the county court should issue to said railroad company the said bonds, but providing that the bonds should not be issued until a bona-fide contract was made with responsible parties for all the iron necessary to the construction of the road, and that said bonds issued to said company, upon the orders of said board, shall be applied to the construction of said railroad in and through said county of Putnam, as specified in a previous order of this board." And on the 15th of March, 1870, said board passed a resolution resolving that said subscription of twenty-five thousand dollars is hereby made in pursuance of said resolution of the 8th of February, subject to the following conditions. [Being substantially the same as were attached to the seventy-five thousand dollar issue.] But no subscription was in fact ever made to the stock of said company, by or in behalf of said county. That on and prior to the 21st of October, 1870, there existed in the State of Indiana a corporation known as the Plymouth, Kankakee & Pacific Railroad Company, with power to construct and maintain a railroad from the easterly line of this State to Plymouth, Indiana. That on the 21st of October, 1870, the corporate rights, stock, powers, and franchises of the Kankakee & Illinois River Railroad Company were consolidated with the stock, corporate rights, and franchises of the Plymouth, Kankakee & Pacific Railroad Company, and became a consolidated company, known as the Plymouth, Kankakee & Pacific Railroad Company, with a capital stock of two million five hundred thousand dollars, it being provided by the articles of consolidation that the stockholders of the original companies should be stockholders of the consolidated company. To this consolidation the county of Putnam assented, and issued to said consolidated company, from time to time, the bonds of the county for said stock so voted to said Kankakee & Illinois Railroad Company, bearing interest and payable as provided in said resolution, with coupons attached for annual interest accruing thereon, which are the coupons in controversy, said bonds being made payable in terms to the Kankakee & Illinois River Railroad Company, but actually dated, issued, and delivered after said Kankakee & Illinois River Railroad Company had become consolidated with the Plymouth,

Kankakee & Pacific Railroad Company, and after the election which sanctioned the subscription to the stock of said Kankakee & Illinois River Railroad Company.

That said board of supervisors appointed a committee, who delivered the bonds to said railroad, and said committee, before issuing said bonds, certified to said board of supervisors that said railroad company had in all respects performed all the conditions required of it, and was entitled to receive said bonds.

That in the fall of 1871 said board of supervisors levied a tax on all the taxable property of said county to raise the money for paying the interest on said bonds, and also borrowed the money to pay a portion of the interest which had accrued thereon. It also appears that the plaintiff is a holder of said bonds for value. The said bonds state upon their face that they are "issued for the subscription to the stock of the Kankakee & Illinois River Railroad Company, in pursuance of a resolution of the board of supervisors of said county."

Upon these facts the question arises as to the liability of the county of Putnam upon the bonds and coupons in question; or, to more specifically state the issue as made by the pleadings, "is the county, by what it has done, estopped from denying its liability upon these bonds and coupons?"

185½ I have examined the question thus raised by these pleadings very carefully, and feel compelled to say that I cannot find any line of distinction between this case and Marsh v. Fulton County, 10 Wall., 676, but it seems to me that case must control the decision of the court in this.

The material facts in that case are these: The State had chartered the Miss. & Wabash R. R. Co., with power to construct and maintain a railroad across the State. In November, 1853, the question was submitted to the voters of the county whether the county should subscribe seventy-five thousand dollars to the stock of said company, payable in bonds of the county, such bonds not to be issued until the secretary of the company should certify to the board that seven hundred thousand dollars had been subscribed, and that five per cent. had been paid thereon. A majority of the votes of the county were cast in favor of the subscription, and in April, 1854, the board ordered its clerk to subscribe for seventy-five thousand dollars of the stock and issue bonds, when it should be certified to him by the secretary of the company that seven hundred thousand dollars of the stock had been subscribed and five per cent. had been paid thereon. In February, 1857, an act was passed by the legislature of Illinois amending the charter of the Mississippi & Wabash Railroad, by which the line of the road was divided into three divisions, and each division was placed under the management and control of a board of three commissioners, to be elected by the stockholders of each division, to be invested with all the powers of the directors of the road in their division. In April, 1857, the stockholders of the central division elected commissioners of the division, who thenceforth, until December, 1868, exercised all the powers conferred by this act.

On the books of the central division thus organized, the clerk of the county court of Fulton County—said County being in said division—acting as the clerk of the board of supervisors, made a subscription of seventy-five thousand dollars in the name of the county. In September following, he issued to this division the bonds which were in suit in that cause. On these facts the court says:

"The amendatory act of 1857, dividing the road into three divisions,

and subjecting each division to the control and management of a different board, clothed with all the powers of the original board, so far as the division was concerned, worked a fundamental change in the character of the original corporation, and created three distinct corporations in its place.

"A subscription to a company whose charter provided for a continuous line of railroad of two hundred and thirty miles, across the entire State, was voted by the electors of Fulton County, not a subscription to a company whose line of road was less than sixty miles in extent, and which, disconnected from the other portions of the original line, would be of comparatively little value.

"But it is earnestly contended that the plaintiff was an innocent purchaser of the bonds without notice of their invalidity. If such were the fact, we do not perceive how it could affect the liability of the county of Fulton. This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instrument might for such reason be taken without special inquiry into their validity. It is a case where the power to contract never existed; where the instruments might, with equal authority, have been issued by any other citizen of the county. It is a case, too, where the holder was bound to look to the action of the officers of the county, and ascertain whether the law had been so far followed by them as to justify the issue of the bonds. The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder.

"It is also contended that if the bonds in suit were issued without authority, their issue was subsequently ratified, and various acts of the supervisors of the county are cited in support of the supposed ratification.

"These acts fall very far short of showing any attempted ratification even by the supervisors. But the answer to them all is, that the power of ratification did not lie with the supervisors.

"A ratification is, in its effect, upon the act of an agent, equivalent to the possession by him of a previous authority. It operates upon the act ratified in the same manner as though the authority of the agent to do the act existed originally. It follows that a ratification can only be made when the party ratifying possesses the power to perform the act ratified.

"The supervisors possessed no authority to make the subscription or issue the bonds in the first instance, without the previous sanction of the qualified voters of the county. The supervisors, in that particular, were the mere agents of the county. They could not, therefore, ratify a subscription without a vote of the county, because they could not make a subscription, in the first instance, without such authorization. It would be absurd to say that they could, without such vote, by simple expressions of approval or in some other indirect way, give validity to acts, when they were directly in terms prohibited by statute from doing those acts, until after such vote was had. That would be equivalent to saying that an agent, not having the power to do a particular act for his principal, could give validity to such act by its indirect recognition."

I have read these copious extracts from this decision because it seems to me as the controlling principle of the case at bar. The vote of the 10th of July, 1869, and the 8th of February, 1870, were both upon the proposition to subscribe to the capital stock of the Kankakee and Illinois River Railroad Company, a corporation possessing the power to construct and maintain a line of road between certain termini in this State, with a capital stock limited, in any event, to the cost of constructing of this road.

The bonds in question were issued after this Kankakee and Illinois River Railroad Company had merged itself, by articles of consolidation, into another corporation, now known as the Plymouth, Kankakee and Pacific Railroad Company, a road having control of a different enterprise from that of the original corporation, possessing a different capital stock, and governed by a different board of directors, elected upon a different basis, with different termini to the road.

In the case of Clearwater v. Meredith, in the 1st of Wallace, page 25, the Supreme Court of the United States has passed upon the effect of consolidating railroad corporations.

In this case Meredith had guaranteed to Clearwater that certain railroad stock should be worth par on the 1st of October, 1855; suit was brought upon the guarantee, and assigned for breach, that the stock was not worth par at the time of the stipulation. To this the defendant pleaded that the stock of the said company had been merged and consolidated with the stock of another railroad company, making one stock of the two under a new corporate name. That the consolidation was made with the consent of the stockholders of both companies. Upon these facts the Supreme Court, by Mr. Justice Davis, says: "When any person takes stock in a railroad corporation, he has entered into a contract with the company that his interests shall be subject to the direction and control of the proper authorities of the corporation, to accomplish the object for which the company was organized. He does not agree that the improvement to which he subscribed should be changed in its purposes and character, at the will and pleasure of a majority of the stockholders, so that new responsibilities, and it may be new hazards are added to the original undertaking. He may be very willing to embark in one enterprise, and unwilling to engage in another; to assist in building a short-line railway, and adverse to risking his money in one having a longer line of transit.

"But it is not every unimportant change which would work a dissolution of the contract. It must be such a change that a new and different business is superadded to the original undertaking.

"The act of the legislature of Indiana, allowing corporations to merge and consolidate their stock, was an enabling act—was permissive, not mandatory. It simply gave the consent of the legislature to whatever could lawfully be done, and which, without that consent, could not be done at all. By virtue of this act, the consolidations in the plea
186 stated were made. Clearwater, before the consolidation, was a stockholder in one corporation, created for a given purpose; after it, he was a stockholder in another and different corporation, with other privileges, powers, franchises, and stockholders. The effect of the consolidation 'was a dissolution of the three corporations, and, at the same instant, the creation of a new corporation, with property, liabilities, and stockholders, derived from those passing out of existence.' McMahon v. Morrison. And the act of consolidation was not void because the State assented to it; but a non-consenting stockholder was discharged."

It is not necessary to read more than that, for the principle which I alluded to is clearly announced, namely, that a different corporation results from the consolidation. The consolidated company is not either of the original corporations, although it may take the name of one of them. The original corporation for the stock of which the county of Putnam subscribed, was solely under control of the State of Illinois; its franchises had been created by that State, and were under its control.

The consolidated company is in two States; its affairs are subject to the control of the legislatures of two States.

The same principle was announced in the case of McMahon v. Morrison, in the 16th of Indiana, and has also been fully set forth in the 29th of Illinois, p. 242.

Now, the principle of all these authorities which I have read, it seems to me, is that the corporate existence of the Kankakee and Illinois River Railroad Company ceased on the 21st of October, 1871, and from that time forward whatever franchises it had were merged in the Plymouth, Kankakee and Pacific Railroad Company, the consolidated corporation, and after this event had taken place, after what we may call the legal demise of the Kankakee and Illinois River Railroad Company, the board of supervisors of Putnam County authorized the issue to the consolidated corporation of the bonds in question.

I cannot see any feature in this case which differs from Marsh v. Fulton County, unless that this is a stronger case than that. There the corporation existed in and was controlled by this State alone, and its termini remained the same, while this consolidated corporation is a very different enterprise from the original to which the subscription was authorized.

It was insisted in the argument, and also in the pleadings, that these bonds being made payable in terms to the Kankakee and Illinois River Railroad Company, is a fact which the court should notice, and which should control the decision of the court. It certainly is an important fact, and has received consideration, but I cannot see that it changes the legal bearings of the question. This was a defunct corporation, and the bonds might just as well have been made payable to bearer, and the person to whom they are made payable cuts no figure in the case.

The Kankakee and Illinois River Railroad Company had gone out of existence, and its demise had become a matter of public notoriety—a matter of public record, because it was necessary that the articles of consolidation should be filed in the office before the bonds were issued.

It is urged further that this company having the power originally by its charter to consolidate with another company, makes the rule in Clearwater v. Meredith inapplicable in this case, but I cannot look upon this clause as changing the application, because since February, 1854, there has been upon the statute-books of this State a general law authorizing any two railroad corporations whose lines form a continuous route, to consolidate their stock, franchises, and property into one corporation, and in examining the proceedings by which this consolidation was accomplished, it is clear that this consolidation was made under this general law, and not under the charter of the company.

Now, in the case of Clearwater v. Meredith, the general law of the State of Indiana existed at the time the stock in question was issued. The law of that State and of Illinois substantially the same, the two States keeping pace with each other in their legislation on this question; but the Supreme Court did not hold that the organic right of either or both corporations to consolidate changed the rights of the stockholders.

Following the doctrines laid down in Marsh v. Fulton County, I am of opinion these bonds are illegal and void. They were issued by the board of supervisors without the power being granted to them for that purpose. The vote of the people authorized the county to issue its bonds to the K. & Ill. River R. R. Co., and they were in fact issued to another company without a vote. It is true that they bear on their face the

statement that they were issued in pursuance of law, and for the stock of the K. & Ill. River R. R. Co., but the assertion is untrue, and cannot be held to clothe the county authorities with power to make the issue.

Demurrer sustained.

T. M. SHAW,
Attorney for Plaintiff.
T. LYLE DICKEY,
For Defendant.

187 Circuit court of the United States for the northern district of Illinois.

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between George Nugent, plaintiff, and the Board of Supervisors of Putnam County, defendant, a manifest error hath happened, to the great damage of the said George Nugent, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,
with all things concerning the same, to the Supreme Court of the
188 United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Nathan Clifford, Acting Chief Justice of the Supreme Court of the United States, this 20th day of August, A. D. 1873, and of our Independence the 98th year.

[SEAL.]

W'M H. BRADLEY,
Clerk of the Circuit Court U. S.
for Northern District of Illinois.

(Indorsed:) Circuit court U. S., northern dist. of Illinois. George Nugent v. Board Supervisors Putnam County. Writ of error.

189 UNITED STATES OF AMERICA, *ss:*

To the Board of Supervisors of Putnam County, Illinois, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1873, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein George Nugent is plaintiff and the said Board of Supervisors of Putnam County, Illinois, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and reversed, and speedy justice done to the parties in that behalf.

Witness my hand this 2d day of October, A. D. 1873.

H. W. BLODGETT, *Judge.*

190 U. S. At the northern district of Illinois, *ss:*

I hereby acknowledge service of the within citation on the defendants in error, The Board of Supervisors of Putnam County.
Oct. 3rd, 1873.

T. LYLE DICKEY,
Attorney for Def'ts in Error.

(Endorsed:) Geo. Nugent vs. Supervisors Putnam Co. Citation.

191 United States Supreme Court, October term, A. D. 1873.

GEORGE NUGENT, PLAINTIFF IN ERROR,
vs.
THE BOARD OF SUPERVISORS OF PUTNAM County, Illinois, defendant in error.
} Error to circuit court, northern dist. Illinois.

And now comes the plaintiff in error, George Nugent, and says, that in the record and proceedings of the said circuit court in said cause there is manifest error, in this:

First. The circuit court erred in sustaining the demurrer of the defendant in error to each of the replications of the plaintiff in error to the special pleas of defendants to the first count in declaration.

Second. The circuit court gave judgment in favor of defendants in error in bar of the causes of action in the first count of the declaration, and for costs, when, according to the laws of the land,
192 judgment should have been rendered in favor of the plaintiff in error.

Wherefore, because of said errors, and other errors, the plaintiff prays that the said judgment be annulled, reversed, and the cause remanded, and he restored to all he has lost by reason thereof.

MARK BANGS,
T. M. SHAW,
Counsel for Pl'ffs in Error.

(Indorsed:) No. 620. Geo. Nugent vs. The Board Sup'r Putnam Co., Ill's. Errors assigned. Filed 30th October, 1873.

(Indorsement on cover:) No. 620. George Nugent, plaintiff in error, vs. The Board of Supervisors of Putnam County. N. Illinois C. C. U. S. Filed 30th October, 1873.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1873.

GEORGE NUGENT, *Plaintiff in Error*, *vs.* THE BOARD OF SUPERVISORS OF PUTNAM COUNTY, ILLINOIS, *Defendant in Error.*	Error to Circuit Court, Northern District of Illinois.

BRIEF FOR PLAINTIFF IN ERROR.

THOMAS M. SHAW, *of Counsel.*

Pearson, Printer, corner 9th & D sts., Washington, D. C.

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STATEMENT.

Page of Printed Record.

The question on this record arises upon the pleadings.

All the counts but the first were nolle pros'd before final judgment, hence the questions are presented by the first count in the declaration, the special pleas thereto, being first, third, and fourth pleas and the replications to such special pleas, to which replications, the circuit court sustained a demurrer. 66

The first count in the declaration is upon twenty-five coupons issued by Putnam county, dated October 25, A. D. 1870, due October 25, A. D. 1872, for interest upon certain bonds of the county issued and delivered to the Plymouth, Kankakee, and Pacific Railroad Company. 2 6

The declaration avers that the railroad company, on the first of January, A. D. 1871, for value, transferred, sold, and delivered the bonds and coupons to the American Life Insurance Company. That the American Life Insurance Company then and there transferred and delivered the coupons to the plaintiff, who was the legal holder for value paid therefor.

The declaration averred that the bonds were issued in part payment of one hundred thousand dollars stock subscribed by Putnam county to the Kankakee and Illinois River Railroad Company, which company had, before the issuance of the bonds, become legally consolidated with the Plymouth, Kankakee, and Pacific Railroad Company, under the name of the Plymouth, Kankakee, and Pacific Railroad Company, such consolidation being authorized by the charter of the Kankakee and Illinois River Railroad Company at the time the stock was voted and subscribed by the county; that the consolidation was effected as well in conformity to the general laws of Illinois, in force at the time the voters of the county voted for the subscription, as in pursuance of the charter. The section of the charter under which the consolidation was effected was set out in the declaration as follows:

"Act approved April 15, 1869.

"Sec. 11. It shall be lawful for said company, and they shall have the power, to unite or consolidate their railroad with any other railroad or railroads, now constructed or being constructed, or which may hereafter be constructed within this state, or any other state, which may cross or intersect the same, or be built along the line thereof, upon such terms as may be mutually agreed upon between said company or any other company. And for said purpose full power is hereby given said company to make and execute such contracts with any other company or companies as will secure the object of such connections or consolidations."

That the supervisors consented to such consolidation and voted in favor thereof as a stockholder at the election held by the stockholders on the question.

That before the subscription of the stock the supervisors were duly authorized so to do by a vote of the people at an election for that purpose, duly held under the laws of the state.

That the clerk and chairman were duly authorized and

appointed to sign and deliver the bonds and coupons in the manner the same was done.

Avers the due presentation and non-payment of the coupons, both at Fourth National Bank, New York, and at the treasurer's office.

The first specal plea sets forth a resolution of the 28
Board of Directors of the Kankakee and Illinois River Railroad Company, passed May 25, 1869, averring that it was spread upon their record and published to the world, that the various municipal bonds which might be voted in aid of the construction of the road should only issue in exchange for stock, when a well assured contract for the iron shall have been secured, based upon the completion of the road-bed through such counties.

That on the 4th day of June, 1869, at Hennepin, the county seat of the county, situated on the west line of the county, three miles from Bureau Junction, the board adopted and spread upon their record a preamble and reso- 29
lutions ordering an election to be held on the 10th day of July, 1869, on the question of subscribing $75,000 to the capital stock of the Kankakee and Illinois River Railroad Company "in case the said railroad shall be so located and constructed through, or within one-half of a mile of, the incorporated limits of the town of Hennepin, in said county of Putnam," and to issue bonds coming due in annual installments of $10,000 per annum, first $10,000 coming due in five years from their date, bearing ten per cent. interest, payable annually. Resolving that if the vote is in favor of subscription, then the board will make the subscription and issue bonds therefor.

Further ordered and resolved, that the bonds or proceeds shall be applied to the construction of the railroad in and through the county of Putnam, as hereinbefore specified, and that the board reserve the right to control the application of the bonds or proceeds to the construction of the road in the county; "And that a committee will hereafter be appointed by said board, to carry out

the directions, resolutions, and intentions of this resolu-
30 tion." Admits the election resulted in favor of the subscription, and that the same was accepted by the executive committee of the company; that the president notified the supervisors of its acceptance, and the letter was received and placed on file by the supervisors on the 27th day of October, A. D. 1869.

The plea set forth in full a preamble and resolutions of the supervisors, passed October 27, 1869, in which, after reciting that at the election held on the tenth day of July, A. D. 1869, under the former order of the board, a majority of the qualified voters of the county, taking as a standard the vote cast at the last general election, voted in favor of the county subscribing $75,000 to the stock of the Kankakee and Illinois River Railroad Company, "Resolved, that the said subscription of seventy-five thousand dollars is hereby made, in pursuance of said resolutions and of said election, for the building of said railroad, subject to the conditions hereinafter mentioned." That a committee of five should be appointed by the board to direct the issuing of said bonds and protect the interests of the county, and to discharge such other duties as ordered by the board. That bonds of the county issue to the amount of the subscription, to be received by the company at par for the stock, in sums not less than five hundred dollars each, coming due and with interest same as in order for the election. That the clerk, under the county seal, execute and issue the bonds to the company, when it has complied with the terms of the order, and upon the written order of said committee. Bonds shall not be issued and delivered until the company "shall have made a *bona fide* contract with responsible parties for all necessary iron for said railroad." That the bonds shall be issued and delivered to the company as aforesaid upon the written order of the committee. That the proceeds shall be applied to the construction of the road through Putnam county.

Further resolved, that the bonds shall not be issued 31
and delivered until the company shall have made a *bona fide* contract with responsible parties for laying and putting down the iron and operating the road through the county. In same order the committee are appointed.

The special plea also sets forth another preamble and resolutions of the board, made on 4th January, A. D. 1870, for an election on the 8th day of February, A. D. 1870, to vote on the question of subscription by the county of $25,000 to the stock of the company. The terms of this order are substantially the same as the order of June 4, 1869.

That on the 12th January, 1870, the Plymouth, Kan- 32
kakee and Pacific Railroad Company was organized under the laws of Indiana, with power to build a road from Plymouth, Indiana, to the east state line of Illinois, in the direction of Momence and Kankakee, with a view to connect with some road leading westward. Length of road sixty-five miles—capital stock $2,000,000.

Admits the election of February 8, 1870, resulted in favor of $25,000 subscription.

Also, a preamble and resolutions of the board, passed March 15, 1870, reciting the result of the election as in favor of the subscription, and making the subscription of $25,000 to the stock of the company on substantially the same terms and conditions as to the issuance of the bonds as in subscribing the $75,000.

The same committee were appointed as in former order. 33

That on June 25, 1870, a resolution to authorize the chairman to make the subscriptions voted in aid of the company upon the books of the company, referring by dates to each election, subject to the conditions contained in the petitions calling the elections, and to the resolutions of the board making the subscriptions to the company, was lost.

That on same day the board passed a resolution that the chairman is authorized and instructed to sign all

necessary papers authorizing the consolidation of the Kankakee and Illinois River Railroad Company with the Plymouth, Kankakee, and Pacific Railroad Company. William Eddy was made proxy for the county.

34 The plea sets forth a resolution of the board, passed September 20th, 1870, authorizing the chairman to sign $25,000 in bonds, and place the same in the hands of the committee of the board, to be delivered to the President and Directors of the Kankakee and Illinois River Railroad Company, in amounts and at such times as may be necessary in constru ting the road through the county, subject to all the conditions in the subscription, and that the proceeds of the bonds shall be used in constructing the road through the county.

The plea avers, that on the 21st day of October, A. D. 1870, and before the railroad had been located and constructed as required in the conditions, and before any *bona fide* contract had been made with responsible parties for the iron for the road, and laying same and operating the road, and when no other fact existed making the county a shareholder than as stated in the plea, the Kankakee and Illinois River Railroad Company and the Plymouth, Kankakee, and Pacific Railroad Company became consolidated in their franchises, property, and stock, and the companies were merged into one, a new corporation, under the name of the latter company, by means of a contract between the two original companies, of that date, afterwards filed in the office of Secretary of State, in the State of Illinois. Capital stock of the new company $2,500,000, in shares of $100 each. The stockholders of each original company to be stockholders in the consolidated company, in like amounts and with like obligations, liabilities, and results between them severally and the consolidated company, as before that existed between them severally and the original corporations respectively. The debts and liabilities of the original companies, respectively, became the debts and lia-

bilities of the consolidated company. The business to be conducted by a board of directors named in the contract, and their successors. That the Kankakee and Illinois River Railroad Company then and there ceased to have, and has had no corporate organization nor officers since that date.

That on 25th October, 1870, the twenty-five bonds in first count mentioned, were signed, sealed, dated, and issued, with the coupons set out signed and attached—each bond dated 25th October, 1870, purporting to be the bond of Putnam county, for $1,000—each payable on its face to the Kankakee and Illinois River Railroad Company, or bearer, at Fourth National Bank, New York, on a day therein named, respectively, with interest at ten per cent. per annum, annually.

That each of the bonds recite that it is issued pursuant to, and under orders of, the Board of Supervisors of Putnam county, for subscription to the capital stock of the Kankakee and Illinois River Railroad Company, as authorized by the laws of the State of Illinois.

Ten of said bonds due in twenty, ten in twenty-one, and five in twenty-two years after date.

That the bonds were signed by the chairman and clerk, and have the seal of the county affixed, and each coupon signed by the clerk.

That at that time, the railroad which had been the Kankakee and Illinois River Railroad, was not constructed through Hennepin, or within one-half mile thereof, and is not yet so constructed.

That at that time, no contract or provision had been made by the Kankakee and Illinois River Railroad Company for the iron for said railroad, nor by any person in behalf of the company; nor was the road-bed completed through the county; nor had the county subscribed on the books of either of said railroad companies any stock; nor had the county, at that time, received any stock of either of said companies.

That on 28th November, 1870, the Plymouth, Kankakee and Pacific Railroad Company issued to the county two hundred and fifty shares of its stock, and delivered the certificate to the county clerk, which had been paid for by the issue of said bonds.

That on the 31st March, 1871, the supervisors passed a resolution instructing the chairman to sign bonds to the amount of $25,000 and place the same in the hands of the committee to be delivered to the President and Directors of the Plymouth, Kankakee, and Pacific Railroad Company, in amounts and at such times as may be necessary in constructing the road through the county, subject to all the conditions in the subscriptions, and that the proceeds shall be expended in building the road in the county.

That on the 10th of June, 1871, a resolution was passed authorizing the chairman to sign $50,000 bonds, at such times and in such amounts as the committee may deem
36 necessary, upon the written order of the majority of the committee, and place same in hands of the President and Directors of the Plymouth, Kankakee, and Pacific Railroad Company on same conditions as in above order.

That on 15th June, 1871, twenty-five bonds and coupons attached issued, dated 1st April, 1871, being the bonds and coupons named in second, third, and seventh counts, describes the bonds and the recitations, and alleges non-construction of the road and non-compliance with conditions, substantially the same as to the first twenty-five bonds.

That on 26th September, 1871, the supervisors levied a tax to pay the interest on the bonds issued to aid in the construction of the Plymouth, Kankakee, and Pacific Railroad. That the tax was not collected, but the collection thereof was restrained by injunction in the state court at the suit of certain tax-payers against the county, its officers, and the railroad company and its officers, which suit is still pending.

That under an order of the board, passed 26th September, 1871, the county borrowed money and paid the interest on the twenty-five bonds named in first count, being the interest coming due October 25, 1871.

That aftewards the residue of the bonds were issued by the officers of the county without any other legal authority so to do than is above set forth.

The second plea was *non assumpsit.*

The third and fourth pleas were not substantially different from the first plea. 37

The fifth plea, being to counts withdrawn, is not in the case. 47

Two replications were filed to each of these special pleas. The first replication to the first plea avers that the railroad was located as required in the conditions of the subscriptions, and the subscriptions accepted by the Kankakee and Illinois River Railroad Company before the consolidation, and was a binding contract on the county, and the board acting in the name of the county then, and have ever since taken part in the affairs of the company, and in the affairs of the consolidated company ever since the consolidation, as a stockholder, and consented to the consolidation. 53

That after the consolidation of the companies, and before the bonds were issued, the consolidated company made a *bona fide* contract with responsible parties, Oliver W. Barnes & Co., for the iron for the road and for laying same and operating the road.

That before any bonds were issued said contract and letters of advice and information as to the responsibility of the parties signing the same were submitted to the committee of the board.

That a majority of the committee, acting in good faith, decided that such contract was a compliance with the con-

ditions in said subscriptions, as to the ironing and operating the road, and that all the conditions were complied with, and on 29th November, 1870, filed the resolution in writing of the committee, signed by their chairman and clerk, dated on that day, with the county clerk, authorizing him to sign the railroad bonds of the county to the amount of $25,000, and place the same in the hands of the committee to be sold, and appropriate the proceeds in accordance with the order of the board. Whereupon the clerk and chairman of the board on that day, November 29, 1870, signed, sealed, and delivered the twenty-five bonds to the committee, and received the certificate of stock therefor. And the committee afterwards, during the year 1870, through the railroad officers, and with their consent, sold and delivered the bonds and coupons to the plaintiff for value.

54 That the other bonds and coupons in the plea mentioned, were from time to time issued and delivered to the committee upon the written order of the committee, signed by the chairman and clerk thereof, except one order signed by the chairman. One of the orders being for $25,000, dated April 1, 1871, was not filed until February 12, 1872, when the same was filed *nunc pro tunc*. That the bonds were issued as well upon the orders of the board mentioned in the plea, as upon the orders of the committee, and by the committee, with the consent of the railroad compay, sold to the plaintiff during the year 1871, for value, and the proceeds of all the bonds, except a small sum not exceeding $2,000, now in the hands of the committee, have been expended towards the construction of said railroad through said county, on the line called for in said subscription, under the supervision of said committee, who have from time to time submitted reports of their doings to the board, and the same have been approved by it.

Plaintiff avers that he is an innocent holder of said bonds and coupons for value before due, without any

notice of any illegality, irregularity, or informality in the making, issuing, or delivery thereof.

He pleads the said matters as an estoppel, which prevents defendant from averring and proving that the said conditions were not complied with, and from proving any irregularity or informality in the issuing and delivery of the bonds and coupons.

The first replication to the third and fourth pleas, is substantially the same as above. 54–56

The second replication to the first, third, and fourth pleas is the same as the first, only omitting the allegations of estoppel. 59–64

The court sustained a demmurrer to each of the replications, and there was judgment for the defendant. 66

ERRORS ASSIGNED.

The plaintiff in error says that the said circuit court erred in sustaining the demurrer of the defendant in error to each of the replications of the plaintiff to the pleas of the defendant, and in entering judgment thereon against the plaintiff in error in bar of his causes of action set forth in the first count of the declaration, and for costs of suit.

POINTS.

I.

The consolidation of the Kankakee and Illinois River Railroad Company with the Plymouth, Kankakee, and Pacific Railroad Company being specially authorized by the charter of the former company at the time the stock was voted, as well as by the general laws of the State of

Illinois, did not release the subscriptions of Putnam county to the stock of the former company, made and accepted before such consolidation.—(Record, p. 6, and Appendix.)

Redfield on Railways, 2d ed., p. 95.

Pierce Railway Law, 95.

Cork and Youghal R. R. Co. vs. Paterson, 37 Eng. L. and E., 398.

Foots vs. London, &c., R. R. Co., 19 Ibid., 7.

Hays vs. Ottowa, &c., R. R. Co., Supreme Court Illinois, 1873—unpublished.

Terre Haute, &c., R. R. Co. vs. Earp, 21 Ills., 292.

Illinois River R. R. Co. vs. Beers, 27 Ibid., 189.

Robertson vs. City of Rockford, 21 Ibid., 451.

Macoupin County vs. The People, &c., 58 Ibid., 191.

Sparrow vs. Evansville, &c., R. R. Co., 7 Port., (Ind.) 369.

Bish vs. Johnson, 21 Ind., 299.

Hanna vs. Cincinnati, &c., R. R. Co., 20 Ibid., 30.

Bishop vs. Brainard, 28 Conn., 289.

Schenectady, &c., R. R. Co. vs. Thatcher, 1 Kernan, (N. Y.) 102.

Buffalo, &c., R. R. Co. vs. Dudley, 4 Kernan, 336.

Oliver Lee and Co.'s Bank, 21 N. Y., 9.

Poughkeepsie, &c., vs. Griffin, 24 Ibid., 150.

Moore vs. Hudson R. R. R. Co., 12 Barb., 156.

White vs. Syracuse, &c., R. R. Co., 14 Barb., 559.

Northwestern R. R. Co. vs. Miller, 10 Ibid., 260.

South Bay Meadow Dam Co. vs. Gray, 30 Maine, 547.

Agricultural Branch, &c., R. R. Co. vs. Winchester, 13 Allen, 29.

Gray vs. Monongahela, &c., 2 Watts and Serg., 156.

Pacific R. R. Co. vs. Renshaw, 18 Mo., 210.

Central Plank Road Co. vs. Clemens, 16 Mo., 359.

Fry vs. Lexington, &c., R. R. Co., 2 Met., (Ky.) 314.

Burlington, &c., R. R. Co. vs. White, 5 Clark, (Iowa) 409.

II.

The condition that the railroad should be located and constructed through Putnam county, over the line named, was not a condition precedent so far as the construction was concerned, as the resolutions show the proceeds of the bonds were to be used in the construction of the road in the county.—(Record, p. 30.)

Miller vs. Pittsburg R. R. Co., 40 Pa. St., 237.
Chamberlain vs. Carnesville R. R. Co., 15 Ohio St., 225.
Ashtabula & R. R. Co. vs. Smith, 15 Ibid., 328.
McMillan vs. Maysville & R. R. Co., 15 B. Monroe, 218.
State vs. Bissell, 4 Greene, 228.
North Mo. R. R. Co. vs. Winkler, 29 Mo., 318.

III.

The condition precedent touching the contract for iron, laying same, and operating the road, being conditions imposed by the supervisors *after* the note was taken, could be waived by the board, and the issuance of such bonds would be a waiver of such condition.—(Record, pp. 31 and 33.)

Commonwealth vs. Pittsburg, 43 Pa. St., 391.
Bell vs. Railroad Co., 4 Wal., 598.

IV.

The committee appointed by the board having passed upon the sufficiency of the contract of Barnes & Co., their action having been approved by the board, and the bonds having passed into the hands of innocent holders, the county is estopped, and cannot go behind such decision. —(See Replications, record, p. 53.)

Commissioners, &c., vs. Nichols, 14 Ohio St., 260.
Evansville R. R. vs. Evansville, 15 Ind., 395.
Commissioners Knox Co. vs. Aspinwall, 21 Howard, 539.
Bissell vs. Jeffersonville, 24 Ibid., 287.
Saint Joseph's Township vs. Sagers, 16 Wal.

V.

The second replication to each plea averred that Barnes & Co. were responsible, and that the conditions as to location and the contract for iron, laying same, and operating the road, were complied with. This was a complete answer to all the questions raised by the pleadings, unless the consolidation released the subscription, or unless the construction was a condition precedent.—(Record, 59–64.)

VI.

The bonds recite that they were issued pursuant to and under the order of the Board of Supervisors of Putnam county, for subscription to the capital stock of the Kankakee and Illinois River Railroad Company, as authorized by the laws of the State of Illinois. They are payable to that company or bearer.—(Record, p. 35.) They are in the hands of an innocent holder for value before due, without notice of any defence.—(Replications, record, p. 54.) Therefore, the county is estopped from denying their validity on any of the grounds set forth in the pleas. The county has recognized their validity by paying the interest, and assuming the position of a shareholder.—(Record, pp. 36 and 53.)

Moran vs. Miami Co., 2 Black, 722.
Gelpcke vs. Dubuque, 1 Wal., 203.
Meyer vs. Muscatine, 1 Ibid., 884.
Mercer Co. vs. Haskell, 1 Ibid., 657.
Van Harstrop vs. Madison City, 1 Ibid., 291.
Supervisors vs. Schenck, 7 Ibid., 82.
Mayor vs. Lord, 9 Ibid., 409.
Pendleton vs. Amy, 13 Wall., 297.
City Lexington vs. Butler, 14 Ibid., 282.
Grand Chute vs Winegar, 15 Ibid., 373.
St. Joseph Township vs. Rogers, 16 Wal.

ARGUMENT.

I.

It was because of the consolidation of the railroad companies alone that the learned judge of the circuit court held these bonds valid. He failed to recognize any distinction between a fundamental change in the enterprise to which stock is subscribed, made by authority of law existing at the time of such subscription, and such a change not authorized by law at the time, but which is effected by and under legislation subsequent to the making of the contract of subscription. The question now presented is, did the consolidation of the Illinois and Indiana corporations, authorized as it was both by the general laws of Illinois and by the special provision of the charter of the Illinois company in force at the time the stock was voted, release and render void the subscription of Putnam county to the capital stock of the former company?

For the general law of Illinois, passed in 1854, relating to consolidation of railroads, see appendix to this brief.

From those laws it will appear that at the time the people of Putnam county voted the stock they knew that by the very charter of the company, as well as by general law, a consolidation might be effected with another company, and, inasmuch as the laws in force at the time a contract is made enter into and form a part of such contract, it may be said the people contracted and consented to such consolidation. Upon principle, and independent of the books and adjudged cases, it seems most unreasonable, and contrary to all the analogies of the law, to hold that if a corporation proceeds within the powers granted by the law of its creation,

that any such act can release its subscribers, or other persons contracting with it, from their liabilities. We are at utter loss to discover any sound reason for such a rule, and believe that none can be given. It is not analogous to a case where, by a charter, the company is authorized to engage in an enterprise specified in the charter, and legislation after the subscriptions are made authorizes a change, radical in its character, one not contemplated by the subscriber at the time he makes his contract, and to which he does not consent. He might, in such case, well object that his property was appropriated and used in a manner, and for a purpose, to which he has not in any manner given his consent. By subscribing stock in a company containing such a clause as the one at bar, he consents in advance to be bound by the acts of the company on the subject. He gives his consent in a manner that he is not at liberty to withdraw it. He may vote against the consolidation, but he consents to be bound by the action of a majority of the stockholders. To illustrate: If a company be organized to build a railroad from Saint Louis to Washington, and, if the company should so elect, to extend it from thence to New York. If, after the stock was subscribed, the company should elect to extend its road to New York, could that release the subscriptions? Would it not be a full answer to such a plea that the subscriber consented upon a certain contingency, which had happened, to engage in the enlarged enterprise? Would it be just to a majority of the stockholders to release him?

The questions arising upon a consolidation are not substantially different. It is only a convenient way—growing out of our local state sovereignties—of enlarging and extending railroad enterprises. Take the case at bar, to illustrate. The court will take judicial notice of the geography of the country. The road of the Illinois company commences at Bureau, on the Illinois river, connecting with the Chicago, Rock Island, and Pacific—

one of the great through routes to the Pacific coast; runs thence east, through certain points named, to the state line. Unless connected at the state line with some railroad there to be built, it would terminate on the prairie. The whole road would not be worth the expense of the right of way. By extending the road sixty-five miles east, to Plymouth, in Indiana, it is connected with the through line under the control of the Pennsylvania railroad, thus making a cut-off in through freights and travel between the East and West of near forty miles, a great and important enterprise. It will thus appear to the court that it is not only true as a matter of legal deduction, but it is true in fact, that the people voted the stock in view of this extension by consolidation; that the consolidation was highly beneficial. The supervisors consented in writing thereto. Upon what principle of law or justice can the county now be heard to say that it will refuse payment of these bonds in the hands of an innocent holder? The subscription being legally made, the supervisors would have the right to consent to such consolidation without another vote of the people of the county. The law of 1849, under which the stock was voted, (see appendix,) provides that the stock subscribed shall be under the control of the county court, (of which the supervisors are the successors,) "in all respects as stock owned by individuals." This provision clearly gave the supervisors authority to consent to a consolidation on behalf of the county, and having such right, the consolidation being made with such consent, it cannot plead a discharge by reason thereof. It is only a non-consenting subscriber who is discharged by a consolidation, even if the consolidation was not contemplated in the original organization. The supervisors could give such consent under the statute as fully as an individual, and having done so, the legal effect is the same.

The books and adjudged cases sustain our position on this point.

Judge Redfield, in his work on Railways, at p. 95, 2d ed., thus states the case. He says:

"8. And notwithstanding much apparent conflict in the cases upon this subject, it will be found to be the result of the best considered cases that the alteration either in the charter of the company, or the line of the road, to exonerate the subscriber for stock, must be one which removes the prevailing motive for the subscription, or else materially or fundamentally alters the duties and responsibilities of the company, and in a manner not provided for or contemplated within the charter itself, or the general laws of the state."

We think it should be added to this, that where the change consists in an extension of the enterprise, but not changing the character of the business, then it must be shown to be injurious, to release the subscriber.

Pierce, in his work on Railway Law, says, that where the power to alter or amend is reserved, the stockholder in advance assents to the alteration, it is an element in his contract.—(p. 95.)

In England the rule is settled in our favor, and we have found no case to the contrary in the decisions of the courts in that country.

In Cork and Youghal R. R. Co. vs. Paterson, 37 Eng. L. and E., 398, (1856, Court Common Pleas,) the subscribers' agreement to the Cork, Middleton, and Youghal Railroad Company gave power to the provisional directors to extend the purposes of the organization, to change the *termini*, and to amalgamate with other companies. The subscribers' agreement to the Cork and Waterford Railway contained a similar agreement. A deed of amalgamation was executed by the two companies. The defendant never assented to the amalgamation otherwise than by signing the subscribers' agreement of the first company.

JARVIS, Chief Justice, said: "I think, then, that being so, that he is a subscriber to the undertaking, because

the effect of that general power is this: he says, 'I subscribe a certain deed, and I authorize you to tack that on to any thing else which you may think fit, and make me a subscriber to that,' and, therefore, in truth, by signing the Cork and Youghal he afforded an authority to the directors to apply his signature to the Cork and Waterford, and, I think, that he, in truth, signs and subscribes an agreement for the Cork and Wateford."

Justices CRESWELL and WILLIAMS deliver equally pointed opinions, and WILES, Justice, concurs. There was no dissent, and defendant was held in an action for calls.

In England a distinction is recognized which is generally overlooked in this country. While the courts there hold the corporation strictly to the original enterprise, unless an enlargement or change is provided for in the charter or articles, yet in corporations in which the public have an interest, as in railway companies, it is held the rule does not apply.

Foots vs. London R. R. Co., 19 Eng. L. and E., (1853,) 7.

In *Hays vs. Ottawa, Oswego, and Fox R. V. R. R. Co.*, which was an action for calls, and one plea was that the company had sold a portion of the road, the court said:

"If authority was given to the corporation to sell, then it only acted within the scope of the powers granted. Persons contracting with it must be presumed to act with full knowledge of its powers, and cannot complain when its acts are in accordance with the law of its creation."

A further plea was interposed in the above case, that the company had leased a portion of the road.

"If there was power to lease the subscription must be regarded as having been made with reference to it, if there was not in the act of leasing such a material and fundamental alteration of the responsibilities and duties of the company as to exonerate the subscriber from payment. Even an alteration in the location of the road, if

made by the authority of law, is no defence to the action for calls. The reason is that the parties are presumed to contract with knowledge of, and reference to, the law."

The same rule would not apply to a law authorizing the act to be done passed *subsequent* to the subscription. On this point hinges the error of the circuit court. It is just to say that the above Illinois authority was not cited in the court below. It is yet unpublished, and we file manuscript copy of the full opinion.

In *Terre Haute & Alton R. R. Co. vs. Ear, jr.*, 21 *Ills.*, 292, the company making the call had been authorized by an amendment to its charter to purchase stock in other railroads. Under such amendment it had purchased a majority of the stock of another company, and built and operated a road thereon, connecting with their original line of road.

It was held by the court that the extension was beneficial and did not release the subscription.

WALKER, Justice, dissents, but in the dissenting opinion he recognizes the rule that an alteration in the enterprise to discharge must not only be fundamental, but "in a manner not provided for, or contemplated by, either the charter itself or the general laws of the state."

Illinois River R. R. Co. vs. Beers, 27 *Ills.*, 189, recognizes the rule that a change to which a subscriber consents at the time he subscribes, though subsequently effected, is binding on the subscriber.

In 1857, the legislature of Illinois incorporated two railroad companies, the Kenosha and Rockford R. R. Co., with authority to build a road from the state line at the intersection of the Kenosha and Beloit R. R., to Rockford, Illinois; the Rockford and Mississippi R. R. Company, authorized to build a road from Rockford to Rock Island.

By the provisions of the charters of each of these companies, the cities, &c., through or near which such road should be located, were authorized to take stock.

Power was given in each of the charters to consolidate, which was done under the name of the Kenosha, Rockford, and Rock Island Railroad Company. The city of Rockford subscribed stock in the consolidated company. The point made was, that though the city of Rockford might take stock in either company, yet no law authorized it to take stock in the consolidated company. It was overruled. In so doing, the court, after referring both to the special authority in the charters and the general laws to consolidate, says: "When the legislature, by the same act which conferred the power on the city to lend its credit to each of these companies, also empowered them to consolidate their roads, it must have been intended that the power of the city might be exercised after such consolidation as effectually as before such event occurred." * * * "After the consolidation, it was still the company created by these acts."

Robertson vs. City of Rockford, 21 Ill., 451.

In Macoupin Co. vs. *The People, &c.*, 58 *Ill.*, 191, the county subscribed $20,000 to the stock of the Decatur and East St. Louis R. R. Co., under a law passed in 1869. Subsequently, that company consolidated with the Toledo, Wabash, and Western Railway Company. It does not appear whether such consolidation was under the general laws of the state, but we infer it was, as the charter contains no authority to consolidate, unless the language giving power to "contract and unite with any other railroad," authorizes such consolidation. The Toledo, Wabash, and Western Railway Company applied for a mandamus to compel the county to issue the bonds to that company. It is a significant fact that neither the court nor counsel in that case questioned the right of the company to receive the bonds if the consolidation was legally effected. The court says:

"The petition does aver that the one company consolidated with the other, and thereby appellee succeeded to

all the rights, privileges, franchises, and property of the first company. This is sufficient."

The circuit court had awarded a peremptory writ for the issuance of the bonds, and that the county should transfer the stock to the railway company for the consideration of two dollars, in pursuance of a contract to that effect made at the time the stock was subscribed. The supreme court held the contract to sell the $20,000 stock at $2, a fraud and evasion. That the county could not be held to that part of the contract, and reversed the order on that ground alone. Saying:

"We cannot say, under the circumstances, that the authorities of the county might not have delivered the bonds if there had been no request or demand for a surrender of the stock without any consideration."

In Indiana it was held, up to 1853, that a consolidation released a non-consenting subscriber. On 23 February, 1853, the assembly passed a general law permitting consolidations, very similar to the Illinois statute. Since that time, the question has arisen in that state, whether such a consolidation released a non-consenting subscriber, and it is the well settled rule in that state, that it is no discharge.

In *Sparrow vs. Evansville and Crawford R. R. Co.*, 7 *Porter*, (*Ind.*, 1856,) 369, the consolidation was effected without the consent of the subscriber. The court, conceding the general doctrine of release in such cases, said:

"When the defendant contracted, an authority to consolidate existed, which, by virtue of the act of February, 1851, the two companies had a perfect right to exercise, and of which he was legally cognizant. His contract having been made under that law, must be presumed to have been made with reference to it, and cannot, therefore, be impaired by the law, because the law is a part of the contract."

Bish vs. Johnson, 21 *Ind.*, (1863,) 299, decided in a case under the general law of 1853, holds the same rule.

Hanna vs. Cincinnati, &c., R. R. Co., 20 *Ind.*, (1863,) 30, was a case somewhat similar to the case at bar. The Indiana company had consolidated with an Ohio company. The Indiana company was organized under the general laws of that state, which provided that the act might be amended or repealed at the discretion of the legislature. The court held it sufficiently appeared that the consolidation was contemplated from the general nature of the enterprise; that it was beneficial, and held the subscriber for calls.

Bishop vs. Brainard, 28 *Conn.*, (1859,) 289, was a consolidation of railroad companies—one existing under the laws of Connecticut, and the other under the laws of Rhode Island. The Rhode Island company had power in its charter to consolidate. Some doubt was expressed by the court as to the power of the Connecticut company to do so, but the act was approved by the legislature, which had the power to amend the charter. It was held that a non-consenting subscriber was not discharged.

We call the attention of the court to a class of cases where substantial changes have been made in the charters of corporations under powers reserved by the legislature, either in the charter or by general law, in which it is held that such changes do not release a non-consenting subscriber.

We assume that a change authorized to be made by the company, and exercised by it in pursuance of the charter, cannot be more potent to release subscriptions than if the power is reserved and exercised by the legislature. In the one case, the company itself, by vote of its stockholders, makes the change. In the other, it is made by the state, which represents other interests. There is, therefore, far less reason for a discharge in the former case than in the latter.

In *Schenectady, &c., vs. Thatcher*, 1 *Kernan*, (1854,) 102, JOHNSON, Justice, in speaking of the reserved power of the legislature to alter and amend, says:

"The courts are bound to read their agreement with the legislative condition."

In *Buffalo, &c., R. R. Co., vs. Dudley*, 4 *Kernan*, (1856,) 336, it is held that it is immaterial whether the change is beneficial or not—that it is a question of power merely—and the doctrine in 1 Kernan was sustained.

These cases are recognized in—
In matter Lee & Co.'s Bank, 21 N. Y., 9.
Poughkeepsie, &c., vs. Griffin, 24 Ibid., 150.

The plaintiff contracted to receive stock of the company for work on the road. After the contract the legislature amended the charter, by which the stock and the indebtedness of the road was increased. It was held he was bound to receive payment in the stock, the legislature having reserved power to amend the charter.
Moore vs. Hudson R. R. R. Co., 12 Barb., 156.

The Legislature of New York authorized railroad companies in that state to subscribe for stock in the Great Western Railroad, Canada. It was held that the assent of the stockholders was unnecessary; and the court distinguish that case from *Hartford, &c., R. R. Co., vs. Crosswell*, (5 Hill, 381,) in this: that the legislature had not in the Hartford case reserved the power to amend the charter.
White vs. Syracuse, &c., R. R., 14 Barb., (1853,) 559.
See, also, Northwestern R. R. Co. vs. Miller, 10 Barb., 260.

A leading case on this subject, fully sustaining our position, is—
South Bay Meadow-Dam Co. vs. Gray, 30 Maine, 547.
Also, Agricultural Branch, &c., R. R., vs. Winchester, 13 Allen, 29.

Noyes vs. Spaulding, 27 Vermont, 420, was a contract for the sale of the stock of a company at a future day. Changes were made in the affairs of the company, and it became united with another company. The court said:

"It is unnecessary in the disposition of this question to inquire what effect the union had upon the value of the stock of the different companies, or whether the franchises or property of the latter have become the property of the former company. It will be perceived that by the charter of the Vermont and Massachusetts Railroad Co. a union of that character was contemplated and allowed. A specific provision for that purpose was granted to that corporation in their charter. In forming that union that corporation was only exercising its corporate powers, subject to which the stock was taken by the original subscribers. When the defendant gave his bond to purchase and receive twenty shares of the Vermont and Massachusetts stock, and bound the plaintiff by his bond to transfer it to him, he assumed the obligation of the purchaser, subject to the exercise of that right by the company, for it was the exercise of a corporate power, which they had at the time, and previous to the execution of this bond.

"Those who were stockholders in that company before the union remain stockholders in the company since they have become united. The company are acting under the same charter, they are in the enjoyment of the same franchises, and are only exercising an extended power, subject to which the whole stock of the company is held."

In *Gray vs. Manongahela, &c., Co.*, 2 *Watts & Serg.*, (1841,) 156, it was held that an act enlarging the privileges and duties of the company is not such an invasion of the privileges of the company as will discharge a subscription.

In Missouri a general law was in force reserving the right to alter, suspend, and repeal charters granted. This power the legislature exercised and amended the charter—one authorizing the company to mortgage the road; another, changing the location of the road. It was held that such amendments did not release subscriptions to the original charter.

Pacific R. R. Co. vs. Renshaw, 18 Mo., 210.
Central Plank Road Co. vs. Clemens, 16 Mo., 359.

In Fry vs. Lexington, &c., R. R., 2 *Met.*, (*Ky.*, 1859,) 314, the court say:

"But an alteration which materially and fundamently changes the duties and responsibilities of the company, or which super-adds an entirely new enterprise to that which was originally contemplated, may be resisted by the stockholders, unless such alterations are provided for in the charter itself, or in the general laws of the state in force at the time the act of incorporation was passed."

The same principle is recognized in *Burlington, &c., R. R. Co. vs. White*, 5 *Clarke*, (*Iowa*, 1857,) 409.

As before said, the consolidation was but an extension of the enterprise. In cases of extension, the courts have held that where such extension is beneficial, that it will not release, and this in cases where the charter did not provide for such extension. In the case at bar, the extension was beneficial. Such is the inference to be drawn from the pleadings. There is no allegation in the pleas that the county was in any manner injured by the extension, nor that the stock was depreciated in value. The rule being that the pleadings must be taken most strongly against the pleader, the presumption is it was not so depreciated.

The case much relied upon by the circuit court and by counsel for defendant, *Marsh vs. Fulton county*, 10 *Wal.*, 676, is not in point. In that case the vote was taken in 1853, to subscribe stock to the Mississippi and Wabash R. R. Co. At that time, no law was in force permitting railroad companies to consolidate, nor was any such provision in the charter. Nor was there any law then in force, general or special, which permitted a railroad company to separate itself and its road practically into three distinct and independent enterprises. In 1857, the legislature passed the law, amending the charter and dividing the road into three divisions, placing each division under a separate management, and practically, as was held by the State and Federal Courts, creating three distinct corporations. *After* this, the clerk of the board of supervisors subscribed the stock on the books of the central division of the company. The act was held to be without power and void.

That case would be more analogous to this if the charter of that company had contained a provision authorizing the division of the road into three parts, as it was done, and if, after the subscription was made and accepted, the county had consented to, and by its vote aided to produce, the division. Such was not the case. The people, when they voted the stock, had no reason to apprehend any such division of the road. Such a contingency was not contemplated by them. The county did not consent to it, for, at the time it was accomplished, no subscription had been made by it nor accepted by the company. The questions raised by this record being so radically and fundamentally different we do not feel justified in asking the court to reconsider the principles laid down in the *Fulton county* case, though it has suggested itself to the professional mind of the country, growing out of recent decisions of this court, that the court was not fully satisfied with the rule in the Fulton county case. It would be a rule far more disastrous to the rights of

innocent holders of securities of this character to hold these bonds void than any decision yet made by this court. It would not only require them to see to the fact that the power existed to subscribe, but they must see that the subscription has not been released after being once legally made. It would require them to investigate and ascertain, at their peril, what changes have been made in the line of the road, in its termini, and what contracts of consolidation it has made. Such a rule would seriously impair the value of millions of dollars of commercial paper with which these municipal corporations have filled the land, and now in the hands of innocent holders for value. We know of no law or rule which would require a purchaser of such bonds to examine the files of the office of secretary of state to see if any contracts of consolidation had been filed. The law does not make the filing in his office constructive notice. The charter does not require that a copy of a contract of consolidation under it shall be filed in the secretary's office. It would probably be good without such filing. The pleadings aver a purchase of these bonds without any notice of any fact impeaching them. The bonds were issued payable to the Kankakee and Illinois River Railroad Company on their face. It is nowhere alleged that plaintiff had notice of the consolidation contract. As we before said, we can have no constructive notice.

The question, therefore, reduces itself to this: Is the plaintiff bound by a release of which he had no notice, express or implied? It is a question of a *release* of subscription once legally made, not a question of *power* to make it. The power to make it, in the first instance, can not be seriously contested, but the allegation is that, by subsequent facts, it was discharged. An innocent purchaser is charged with implied notice of those facts, and the resulting release, working a revocation of the power of the supervisor to issue the bonds. This is contrary to all the analogies of the law. The power being

shown to exist, and being in part executed, it is to be presumed, in favor of an innocent purchaser, to continue, and notice of a revocation must be brought home to him. The Fulton County case raised a question of power to make the subscription at the time it was done, and not a question of discharge.

In *Clearweather vs. Meredith*, 1 *Wall.*, 25, the question before the court did not involve the release of a subscription. What was said on the subject was merely by way of illustration, apparently without much consideration, and refers for authority to an Indiana case, McMahon vs. Morrison, 16 Ind., made before the law of 1853 was in force, and since which time the rule contended for by us has been fully sustained and recognized by the supreme court of that state. We submit, therefore, that the case is not authority on the question.

In *Illinois Grand Trunk R. R. Company vs. Cook*, 29 *Ills.*, 237, the point that the consolidation took place under a general law in force at the time the stock was subscribed, is not noticed by court or counsel. The general question only was considered by the court, and not the effect of such alterations and consolidations as come within the provision of the charter or general law at the time of the subscription. Any other construction of that decision would be to charge the court with gross ignorance in saying that "it is believed that no court has ever held that a change of such an enterprise, so as to render it radical, and to constitute it a different corporation for the attainment of other purposes than those to which the subscription was made, did not release the subscriber from its payment." It would be wholly inconsistent with the other decisions of the Supreme Court of Illinois.

Some question was made by counsel upon the fact that the subscription was not entered on the books of the railroad company. The subscription was made in the most solemn and binding manner known to the law, by enter-

ing the official action of the board in the public record of their proceedings required by law to be by them kept. This public record is the only competent evidence of the official action of the board. It was accepted by the railroad company.

It was wholly unnecessary it should be entered on the subscription books of the railroad company. If authority is desired on this question, see

Clark Co. Justices vs. Paris & Turnpike Co., 11 B. Monroe, 143.

It was further said that the subscription being conditional, the county was not a shareholder until condition performed, and Chase vs. Sycamore, 38 Ills., 215, was cited cited in support thereof. It is too late to discuss the question whether the acceptance of a conditional subscription creates a binding contract of subscription. It is too well settled. The question decided in the above cases, as to whether the books of the company are evidence against such a subscriber before condition performed, arises not in this case.

II.

The pleadings admit the location of the road on the line called for in the subscription, before the consolidation or issuance of the bonds. The subscription requiring the proceeds of the bonds to be used for construction purposes in the county, and the bonds being so used, under the direction of the committee—whose action was reported to, and approved by, the supervisors—it is no defence to say the road is not constructed. The construction is not a condition precedent. It is true the $25,000 subscription does not in terms order the proceeds to be used in the county, as the same is set forth in the first and fourth pleas; nor is the location and construction made conditions precedent on the face of the subscription. The subscription, however, refers to the order

calling the election, and in the order are found the provisions in regard to location and construction, and the disbursement of the proceeds in Putnam county. The third plea alleges that the conditions as to location, construction, and disbursement of proceeds were a part of the subscription. We submit this point without argument, simply referring the court to some analogous cases that the court may examine them if any doubt exists on this point.

III.

We think this point so clear, that much argument is not needed. It was a condition imposed by the supervisors and not by the voters. The board could waive any condition it had made of its own motion, not imposed by the law nor by the voter. The fact of the issuance of the bonds is a waiver of such condition. Indeed, we take the ground that the supervisors had no right to impose any conditions after the vote was taken. That it was a different contract than the one they were, by the vote, directed to make. That any condition imposed by them, different and in addition to the conditions imposed by the people, is void. We think the only effect these conditions as to making contracts with responsible parties for ironing and operating the road, is in the nature of a rule for their own government in the issuance of the bonds. It is not in any manner made a condition to the subscription. The only condition to the subscription is as to the location of the road, and the right of the board, through its committee, to control the application of the proceeds of the bonds to the construction of the road in Putnam county. It is to be treated as a mere *ex-parte* resolution of the board, and as no part of the contract of subscription. The want of power in the supervisors to impose conditions after the vote was taken, is fully sustained in *Ball* vs. *Railroad Co.*, 4 Wal., 598.

But if any conditions were legally imposed by the supervisors, the issuance of the bonds by their consent and approval, the payment of the interest, levying taxes therefor, taking part in the affairs of the company as a stockholder, proves the conditions to have been complied with, or waived.

Commonwealth vs. Pittsburg, 43 Pa. St., 391.

IV.

But if the condition in regard to contract for iron, laying the same, and operating the road was a valid and binding condition, and if it was not complied with nor waived, yet the replications show that a contract was made as required in the condition. That it was submitted to the committee with information and advice as to the responsibility of Barnes & Co. That the committee, in good faith and without fraud, decided that the conditions were complied with, and ordered the bonds issued. The action of the committee was reported to and approved by the board. We urge that the decision of the committee was final; and even if erroneous, the county cannot now investigate that question over again to see if the authorities made a mistake in arriving at the conclusion they then did. The replications well allege that the county is estopped from so doing. The statute does not impose the decision of this question upon any specific tribunal. This being so, the tribunal or officer whose duty it is to first act in the matter, would necessarily have the decision of that question. This would impose the duty on the county authorities, and their decision in good faith would be final, at least so far as an innocent holder of the bonds is concerned.

A statute of Ohio provided that county bonds should not be delivered by the commissioners until sufficient was subscribed or provided to build the railroad; making it their duty to do so when sufficient stock was so sub-

scribed, without indicating who should determine that fact. It was held it necessarily gave the power to the commissioners. If they, acting in good faith and with reasonable prudence and caution, decide that sufficient is subscribed or provided, and deliver the bonds, they will not be invalidated if the means prove wholly insufficient.

Commissioners vs. Nichols, 14 Ohio S., 260.

Evansville R. R. vs. Evansville, 15 Ind., 395.

Many authorities from state courts might be added, but the rule is so well established in this court that we will not cite further, except from this court.

Commissioners Knox Co. vs. Aspinwall, 21 Howard, 539.

Bissell vs. Jeffersonville, 24 Ibid., 287.

V.

The only difference between the first and second replications to each plea is, that the first replication is plead as an estoppel, denying the right of the county to inquire into the sufficiency of the Barnes & Co. contract, as a compliance with the condition, The second replications simply allege the facts showing a compliance with the conditions, but not pleading it by way of an estoppel. Hence, whatever view the court may take of the law of this case, the second replications must be held good, unless the bonds are void by reason of the consolidation or non-construction of the road.

VI.

It has become a rule of property growing out of the oft-repeated decisions of this court, upon the faith of which millions of dollars are to-day invested, that where a municipal corporation "has power, under any circumstances, to issue negotiable securities, the *bona fide* holder has a right to presume they were issued under the circumstances which give the requisite authority, and they

are no more liable to be impeached for any infirmity in the hands of such holder than any other commercial paper."

Gelpcke vs. Dubuque, 1 Wal., 203.

This doctrine is so well settled in this court, that it has passed from the forum of discussion. We do not feel justified in reviewing the cases. They are too familiar and oft-repeated, and are doubtless fixed in the mind of the court. In the very recent case of St. Joseph's Township vs. Rogers, the principle is again re-affirmed in such manner as should leave no doubt in the mind as to the position of this court on that question.

It seems clear that no question is raised in this record which is not met by some of the numerous decisions of this court in the questions presented in the former adjudged cases. All that is necessary to protect the rights of the plaintiffs is, that the court should stand by its decisions.

Much stress was laid by counsel for defendant on the point that the recitation in the bond to estop the municipality must be of a fact which the officer was authorized by law to ascertain or declare, relying upon *Kenwick* vs. *Wayne County*. We fully concede the force of the proposition. In so doing we do not concede that any affirmative statute, in direct terms, giving authority to ascertain and declare the fact, is necessary. Such power may be, and most frequently is, conferred by necessary implication. It will scarcely be insisted by counsel that the question as to the performance of a condition precedent in a subscription for stock must be referred to the people to ascertain and declare it by vote. If the statute does not provide how it shall be ascertained and declared, then, power to do so is, by necessary implication, vested in the officers of the municipality, whose duty it is to act. If they are proceeding improperly, doubtless the courts would interfere and inquire into the propriety of such

decision; but when the rights of innocent holders of commercial paper intervene, it is too late to review the facts so ascertained and declared. The recitations then operate as an estopel. The committee, whose action was approved by the board, ascertained that the conditions in the subscription were complied with. The bonds recite that they are issued under the order of the board, for the stock of the Kankakee and Illinois River Railroad Company, as authorized by the laws of Illinois. These recitations are an estoppel upon the county. It was the duty of the officers to obey the law. The purchaser of the bonds had the right to presume that the officers performed their duty, and did not issue them until they ascertained that the law had been complied with. It was a misdemeanor for the officers to do otherwise.

It will be urged by counsel for the county, that the act of 1869, which will be cited by him, changes the rule as to municipal bonds issued in Illinois, and deprives them of their character as commercial paper. Hence, that the rules and decisions of this court in the cases cited by us, are not applicable. In the first place, we insist that the act of 1869 applies only to bonds registered under that act in the office of auditor of public accounts of the state. That these bonds are not so registered nor entitled to registry.

Second. It was not the purpose of that act to deprive the bonds of their character as commercial paper, nor does it provide or declare any new method, or designate any particular officer who shall ascertain and declare when conditions precedent have been complied with. It leaves that question where it before was. The same officers must decide it, and necessarily with the same effect.

It could not be the intention of the legislature to permit the officers to decide that the conditions precedent had been complied with, issue the bonds, and when called upon for payment, say that the first decision was unwarranted, and by that means impeach the bonds in the hands

of an innocent holder. The purpose of the statute was this: Doubts existed in the legislative mind as to the power of municipalities to impose conditions in their subscriptions. It was a question mooted in the courts of the state at that time, though it has since been settled in favor of the right so to do, independent of the act of 1869. The act was intended to settle this right. We do not think it was contemplated that the bonds should be made with a condition written therein. If this is the construction, it is enough to say that the people of Putnam county directed the subscription to be made with conditions; not that the bonds should be so made.

The subscription might not be binding until the condition was performed. But our right of action is based on the bonds, and not on the subscription. Our bonds are unconditional. The learned counsel will not, we trust, charge that the legislature intended that bonds should be made and put on the market of the commercial world, unconditional on their face, yet, in fact, coupled with a condition, *de hors* the bonds, that might defeat them. It would be offering a premium on fraud, and impeach the common honesty of the state. If the bonds "shall be made" on conditions, then the people in their vote must prescribe the conditions, which shall be inserted in the body of the bonds. If the conditions relate to the subscription, then, at the common law, the subscription would not be binding, or, more correctly speaking, payment could not be enforced until the condition is complied with. If the conditions are in the subscription, and it is contemplated to issue an unconditional bond in payment of it, then it remains the common law duty, arising from necessary implication, of the officers of the municipality to decide when the conditions are performed, and thereupon to issue the bonds unconditionally; they are received as cash in payment for the stock, and are not liable to be impeached in the hands of an innocent holder. It is a grave error to say that be-

cause the bonds are based on a statute, that they are not commercial paper, and the common law rules and decisions do not apply. In the cases decided in this court the laws required certain acts precedent to be done, and forbid the issuance of the bonds until such conditions were performed. This was equivalent to saying that the bonds or subscription should not be binding until the conditions were complied with. Yet in all that class of cases this court has uniformly held that the bonds were commercial paper and entitled to all the benefit of the rules attending that class of securities, and justly so held. When a statute shall be passed making it the duty of the purchaser to ascertain and declare when conditions have been complied with, instead of the duty of the municipality and its officers to do so, then the responsibility of so deciding would be shifted, but until then that responsibility, with all its consequences, according to the rules of the common law; is upon the municipality. So much on the general question.

Conceding that bonds issued in aid of railroads in Illinois are not commercial paper, in view of the statute, will not invalidate these bonds. There was but the one condition precedent imposed by the county by its vote, which was, that the road should be located on a line named. This was done. The county claimed to retain control of the application of the proceeds. This could not be a condition precedent, as the bonds must first be delivered to the company and sold to obtain the proceeds. We have shown that the construction is not a condition precedent. The statute of 1869 gives the power to the county, not to the board of supervisors, to impose conditions. The county imposed but the one. The condition relating to contracts for iron, &c., was a subsequent and unauthorized condition imposed by the supervisors, and is not within the letter or spirit of the statute.

Some technical questions are raised here not discussed or noticed below. It is said that owing to the character

of the pleas, that we could only demur or join issue. The authority quoted shows that the "special traverse plea" is obsolete.—(Stephens' Pleadings, pp. 181–182, marginal.) It is wholly unknown to the practice in Illinois, by which rules of practice and proceedings the circuit court is governed.

It is said there is a departure in this: that the time the bonds and coupons were made are stated at different dates in the declaration and replication. The *time* of making and delivery is not matter of description, and is immaterial. If the replication departed from the declaration as to *date*, that being matter of description, might be fatal on special demurrer pointing it out specifically, which is not done in this case. The fact is, the bonds were antedated, and were declared upon generally as of that date, 25th October, 1870. In setting forth the date of the order of the committee to issue the bonds, it is averred that the bonds were issued after the date of the order. The bonds and coupons, as to all matters of description, remained the same. It cannot be doubted that under the allegations in the declaration we might show the true time of delivery, but our coupon, when produced, must bear date October 25, 1870, as set up in the declaration. Hence there is no departure.

It is said there is a departure as to the manner in which the coupons came to the plaintiff. The only material fact is, that the plaintiff was the legal holder at the time of suit brought. It matters not how, as the coupons are payable to bearer, and pass by mere delivery, as has often been decided by the Supreme Court of Illinois, and other courts. Nor does counsel state with entire correctness the allegation in the replication. It is that they were sold by the committee under the direction of the railroad company. Thus making the committee the agent of the company, that they might more certainly control the proceeds.

The special demurrer does not sufficiently point out

these objections. They are argued for the first time in this, the court of last resort, are exceedingly technical, and not much entitled to the favor of the court.

The questions presented by this record are of grave importance, affecting not only the bonds issued by Putnam county, but a large amount of other municipal bonds issued to this company. We have endeavored to treat them fairly upon the merits. An examination of the cases cited, show more fully than we have been able to set forth in this brief, the reasons upon which the rules contended for rest. We feel confident that a careful examination of the authorities cited will strengthen our position in the mind of the court.

Respectfully submitted by

THOMAS M. SHAW,
Counsel for Plaintiff in Error.

APPENDIX.

AN ACT supplemental to an act entitled "An act to provide for a general system of railroad incorporations."

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever the citizens of any city or county in this state are desirous that said city or county should subscribe for stock in any railroad company already organized or incorporated under any law of this state, such city or county may, and are hereby authorized to purchase or subscribe for shares of the capital stock in any such company, in any sum not exceeding one hundred thousand dollars for each of such cities or counties; and the stock so subscribed for or purchased, shall be under the control of the county court of the county, or common council of the city making such subscription or purchase, in all respects as stock owned by individuals.

§2. That for the payment of said stock, the judges of the county court of the county, or the common council of the city making such subscription or purchase, are hereby authorized to borrow money at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county or city for the annual payment of the interest, and the ultimate redemption of the principal, or if the said judges or common council should deem it most advisable, they are hereby authorized to pay for such subscription or purchase in bonds of the city or county making such subscription to be drawn for that purpose in sums not less than fifty dollars, bearing interest not exceeding ten per cent. per annum: *Provided*, that no bond shall be paid out at a rate less than par value.

§3. The railroad companies already organized or incorporated, or hereafter to be organized or incorporated under the laws of this state, are hereby authorized to receive the bonds of any county or city becoming subscri-

bers to the capital stock of such company, at par, and in lieu of cash; and to issue their bonds bearing interest not exceeding ten per cent. per annum for any moneys by them borrowed for the construction of the railroad and fixtures, or for the purchase of engines and cars, and for such purpose may dispose of any bonds by them received as aforesaid.

§4. No subscription shall be made or purchase or bond issued by any county or city under the provisions of this act, whereby any debt shall be created by said judges of the county court of any county, or by the common council of any city, to pay any such subscription, unless a majority of the qualified voters of such county or city (taking as a standard the number of votes thrown at the last general election, previous to the vote had upon the question of subscription under this act, for county officers) shall vote for the same; and the judges of the county court of any county, or the common council of any city desiring to take stock as aforesaid, shall give at least thirty days notice, in the same manner as notices are given for election of state or county officers in said counties, requiring said electors of said counties or said cities to vote upon the day named in such notices, at their usual place of voting, for or against the subscription for said capital stock which they may propose to make, and said notices shall specify the company in which stock is proposed to be subscribed, the amount which it is proposed to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which such loan is to be effected; and the opinion of the electors shall be expressed upon their ballots "for subscription," or "against subscription," and counted and returned by the judges and clerks of elections as in other cases; and if a majority of the voters of said county or city, assuming the standard aforesaid, shall be in favor of the same, such authorized subscription or purchase or any part thereof shall then be made by said judges or common council.

In case any election had under this act is held upon a day of a general election, then the number of votes thrown at such general election for county officers, shall be the standard of the number of qualified voters as aforesaid.

No bonds shall be issued under the provisions of this act by any county or city, excepting for the amounts required to be paid at the time of subscription, and for the amounts of and at the time when assessments upon all the stockholders of said company shall be regularly assessed and made payable.

§5. This act shall take effect from and after its passage.

Approved, November 6, 1849.

AN ACT to enable railroad companies and plank road companies to consolidate their stock.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all railroad companies and plank road companies now organized, or hereafter to be organized, which now have, or hereafter may have their termini fixed by law, whenever their said road or roads intersect by continuous lines, be, and the same are hereby, authorized and empowered to consolidate their property and stock with each other, and to consolidate with companies out of this state, whenever their lines connect with the lines of such companies out of this state.

§2. Such consolidation may take place whenever the said companies shall, respectively, agree upon the terms and conditions of the same; and the said companies, when so consolidated, shall be authorized to agree upon the name or names of such consolidated company, and by such name or names the said consolidated company shall be a body corporate and politic, shall have a common seal or seals, and by such name or names shall be respectively contracted with and make contracts, shall sue and be sued, implead and be impleaded with, and shall have all the powers, franchises, and immunities which the said respective companies shall have by virtue of their respective charters, before such consolidation passed, within the State of Illinois: *Provided*, that each consolidated company shall file for record, in the office of the Secretary of State, a copy of their said articles of consolidation, evidenced by the signature of the presiding officer of each of the said companies, and the corporate seal thereof.

§3. The corporation or corporations formed by virtue of the provisions of this act, shall have power to increase their capital stock to any amount required, by resolution of their respective boards of directors, not exceeding the amount of the costs of the roads and works constructed and equipped by them; to borrow money and fix the rate of interest therefor; to issue bonds, and the same to sell at such price as they may deem expedient, such sales being hereby authorized and confirmed; and to make any other contracts authorized by the by-laws of the said corporation or corporations, within the purview of their said charters.

§4. Such corporation or corporations, when so formed, shall have the same power to consolidate with other companies when their lines connect, upon such terms as may be agreed upon by them respectively.

§5. No company in this state shall be authorized, under the provisions of this act, to consolidate with any company beyond the limits of the state, until the termini of such company in this state shall first have been fixed by the laws of this state at the boundary line thereof.

§6. This act shall not be so construed as to authorize any plank road, not having power to build a railroad, to consolidate with any railroad, so as to lay a railroad upon any plank road track, until the termini of such railroad shall have been expressly fixed by law; nor shall any plank road so consolidate with any railroad unless authorized by law to lay a railroad track.

§7. All proceedings for the purpose of consolidation, as above provided, shall be fixed and regulated by the by-laws of the respective companies desiring such consolidation: *Provided*, that such consolidation shall not take place until the terms of such consolidation shall have been approved by a majority of the stockholders in interest, in person or by proxy, at an annual or called meeting, of which due notice shall be given by publication or in writing, to all the stockholders interested, or the same be approved by the written consent of a majority of the stockholders in interest, filed in the office of their company.

§8. When it shall be necessary for the construction of any railroad to cross the track of any other railroad, stream of water, water course, road, or highway, which it may intersect or cross by reason of such extension

into or through any adjoining state, or by reason of its consolidation with any other road or roads, company or companies, as provided in this act, it shall be lawful for said company to construct their road across or over the same by such track or tracks, bridge or bridges, viaduct or viaducts as may be necessary to the convenience of the extension or consolidation of said road: *Provided*, said company shall restore the railroad, stream of water, water course, road, or highway thus intersected or crossed, to its former state, or in a sufficient manner not materially to interfere with its usefulness.

§9. This act shall take effect from and after its passage.

Approved, February 28, 1854.

SUPREME COURT OF U. S.

OCTOBER TERM, A. D. 1873.

No. 620.

GEORGE NUGENT, Plaintiff in Error,

vs.

THE BOARD OF SUPERVISORS OF PUTNAM COUNTY, Defendant in Error.

Error to Circuit Court of Northern District of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

T. Lyle Dickey,
For Defendant in Error.

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Error to Circuit Court of Northern District of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

BY T. LYLE DICKEY.

BRIEF.

I.

THE bonds and coupons mentioned in the first count are and were absolutely void, for want of authority in the county officers to issue the same and charge the county thereby.

Marsh v. *Fulton County*, 10 Wallace, 676.
Clearwater v. *Meredith*, 1st Wallace, 25.
Kennicott v. *Wayne County*, (decided by this Court—not yet reported.)
Chamberlain v. *P. & H. R. R. Co.*, 15 Ohio State Rep. 247.
Godfroi & Shortt on R. R. Corporations, p. 7.
Buffalo, &c., v. *Dudley*, 14th N. Y. 336.
Evansville R. R. Co. v. *Shearer*, 10th Ind. 244.
Jewett v. *Lawrenceburg R. R. Co.*, 10 Ind. 339.
Pierce on Am. Railway Law, pp. 70–71.
Trasher v. *Pike Co. R. R. Co.*, 25 Ill. R. 405.
Chase v. *Sycamore, &c., R. R. Co.*, 38th Ill. 215.
17 Barbour, 579.
Carrick's Case, 40 Eng. Chancery R. 509 (1 Sim. N.S. 510.)
Waterford R. R. *Co.* v. *Pidcock*, 8th Exchequer R. 279.

II.

Bonds of municipal corporations issued in Illinois since the act of April 16, 1869, for R. R. stock upon *conditional* subscriptions, are not commercial paper, and hence the same defence can be interposed as if the suit were brought in the name of the Railroad Company; and as against the Railroad Company, for whose stock these bonds were issued, the defence is perfect. Statute of Ill., April 16, 1869. Gross' Statutes, 556; (Session Laws of 1869, page 316, Sec. 7.)

ARGUMENT.

I.

Let us first examine the law upon the hypothesis assumed by the plaintiff in error, viz.: That, on the 21st of October 1870, at the time of the consolidation of the Kan. & Ill. Riv. R. R. Co. with the Indiana R. R. Co., by which the new corporation, called the Plymouth, Kan. & Pacific R. R. Co., was created, there was a binding contract between the County of Putnam and the Kan. & Ill. Riv. R. R. Company; on the part of the County, that the County would take $25,000 of the stock of *that Company* and issue county bonds therefor, in case said Railroad should be located and constructed through Putnam county and within one-half mile of Hennepin; and upon further condition that the R. R. Co. would provide for ironing and running the road by a suitable contract; and on the part of the R. R. Co., that it would perform these conditions and give the stock and receive the bonds therefor; and upon the further fact, as part of the hypothesis, that the Board of Supervisors, be-

fore the consolidation, gave their consent to such consolidation, and undertook to give the consent of the county. This is all that is claimed as to the facts of the case in that regard by plaintiff in error. It is not pretended that any of the conditions of the suppposed contract were performed *before* or at the time of the consolidation. It is alleged that the bonds were issued on Nov. 29, 1870, and that *before* the *bonds were* issued (not before the consolidation) the railroad was *located* according to the conditions, and that the condition as to the iron contract was also either properly performed or waived, and it is insisted that the "construction" was not a condition precedent.

Upon this, the hypothesis of the plaintiff in error, we maintain that the bonds and coupons were void for want of lawful authority in the Chairman of the Board and the County Clerk to issue them, and present as authority for our position, the doctrines laid down in the case of *Marsh* v. *Fulton Co.*, 10 Wallace, 676.

In that case it is said that "the only subscription authorized "by the voters of Fulton County was that to the Mississippi & "Wabash Railroad Company." "The Central Division of the "Mississippi & Wabash Railroad Co. was a different corpora- "tion from the original company." The amendment of the charter, &c., "worked a fundamental change in the "character of the original corporation." * * * "A sub- "scription to a company whose charter provided for a contin- ,'uous line of railroad of 230 miles across the entire state was "voted by the electors of Fulton County—not a subscription to "a company whose line of road was less than sixty miles in "extent."

"This," says Justice Field, "is not a case where the party "executing the instrument has a general capacity to contract."

So in this case we say, that "the only subscription authorized by the voters of" Putnam "county was that to" the Kankakee & Ill. River R. R. Co. The Plymouth, Kankakee & Pacific R. R. Co. "was a different corporation from the original "company" to which the subscription was in fact voted. The amendment to the charter, produced by the consolidation, "worked a fundamental change in the character of the original "corporation." * * * "A subscription to a company "whose charter provided for a continuous line of railroad of" only 100 miles, all lying in the the State of Illinois and subject to Illinois law alone, "was voted by the electors of" Put- "nam "county—not a subscription to a company whose line "of road was" over 165 miles in extent, running through parts of two states, and subject on one part of its line to the laws of one state, and on the other part of its line to the laws of another. The change in the case at bar is as fundamental as in the case in judgment.

The authority of this case of *Marsh* v. *The Board of Supervisors of Fulton County* (found in 10 Wallace, 676) is fully recognized and re-affirmed by the Supreme Court of the U. S. in the recent case of *Kennicott* et al. v. *The Board of Supervisors of Wayne County*, decided at the December term 1872. not yet reported.

In that case Mr. Justice Hunt has laid down certain propositions as settled in the Supreme Court of the U. S., and among them that "there must be an original authority by statute to "the municipality to issue the bonds. Municipal corporations "have not the power, except through special authority of the "Legislature, to issue" such "corporate bonds," and refers to the case of *Marsh* v. *Fulton County* (10 Wallace) as the authority therefor.

To this plaintiff in error replies, in substance, that the case of *Marsh* vs. *Fulton County* is not in point, because in that case the change in the character of the stock (from that voted for to that for which the bonds were issued) was wrought under an act of the Legislature passed *after* the vote was taken, while in the case at bar the power to consolidate existed at the time of the vote, by reason of a statute passed *before* the vote was taken, and that in this case the voters must be held to have voted in view of the power of the original corporation to enter into this consolidation.

This, we submit, is not sound reasoning, and that the point so presented is a distinction without a difference. The reason assigned for holding (in the Fulton county case) that the act of the officers was without authority, is *not* that the Legislature had interfered, but it is that a change in the nature and character of the stock had been brought about, so that the stock for which the bonds were issued was essentially *different* from that voted for. In that case, when Fulton county voted to take that railroad stock, it was known to the voters that the power existed in the Legislature, with the consent of the corporation, to change the charter fundamentally; and as well might it have been said in that case that the voters must be held to have voted in view of this power in the Legislature, with the consent of the corporation, to work the change. The true ground in each case is, that the charter was essentially changed, so that the stock voted for was not substantially the same as the stock taken. In the one case the change in the charter was wrought by the act of the Legislature and the corporators; in the other the charter was fundamentally changed by the action of the corporators under an act previously passed. In both cases the power to effect the change existed and rested somewhere at the time of

the vote. In the Fulton County case it rested in the Legislature and the Railroad Company; in the case at bar it rested in the Railroad Company alone. In both cases the power to work the change rested in the corporation, with the permission of the Legislature. In the one case that permission by the Legislature was given *before* the vote, and in the other *after* the vote. The effect in both cases was the same. It essentially changed the subject matter about which the vote was taken; in fact, destroyed it, and substituted in its stead a new subject matter, about which the voters had not voted. The decision in the Fulton County case did not turn on the means by which the change was wrought, but upon the radical and fundamental character of the change. No matter *how* the change was brought about, it was the *fact* that such a radical substitution had been made.

To support these views we call to our support the decision of this Court, reported in 1st Wallace, 25, *Clearwater* v. *Meredith* the reasoning of which shows that, in this case, the Kan. & Ill. R. R. Co., by the consolidation, *ceased to be*, and that its stock *ceased to be*, and that the stock of the new corporation formed by the consolidation is *not identical* with the stock of the original corporation, but is a new and different stock, so much so that a contract as to the one is not applicable to the other—the guaranty of the value of the one is not a guaranty of the value of the other; and from this we very readily infer that a power given to an agent to buy the one is not a power given to buy the other. We call attention to the fact, that in the *Clearwater-Meredith* case the statute authorizing the consolidation (the effect of which, that case decides) was in full force at the time of the making of the contract of guaranty, which was the subject matter of that suit.

To distinguish the *Clearwater-Meredith* case (1st Wallace, 25) from the case at bar, the plaintiff in this case calls attention to the fact that in that case there was no allegation that the guarantor of that stock consented to the consolidation, while in the case at bar it is alleged that the defendant consented to this consolidation.

To that we answer, that the defendant in this case never did consent to the consolidation. The defendant in this case is the County of Putnam, a corporation consisting of the people of that county. Though the statute, as a matter of form, directs that in suits against the county the process shall be against the Board of Supervisors, still the Board of Supervisors do not constitute the county, but are merely agents for the county, acting under a special power of attorney, consisting of the laws of the state. Unless the Board of Supervisors had some special authority to act in behalf of the county in that regard, such acts of the Board are absolutely void. This principle is fully established in the "Floyd acceptance case" and in the Fulton County case in 10th Wallace. The law does provide that the Board of Supervisors shall have control of railroad stock which belongs to the county, but that power does not arise until the county *has* such stock to be controlled. In this case, at the time of the consolidation, and before that time, the County of Putnam was not a stockholder in the Railroad Company, and therefore the Board of Supervisors did a gratuitous and void act when they gave their consent and undertook to give the consent of the county to such consolidation. They had no power to bind the county by such action. It is not perceived how the consent of the Board of Supervisors to the consolidation, given *before* consolidation, can have any more significance or binding effect

upon the county than if given *after* the consolidation. In the Fulton County case it was insisted that the Board of Supervisors had fully given their consent to the substitution of the new stock for the old by paying interest upon the bonds; but the Court say in that case, "the answer to them all is, that "the power of ratification did not lie with the Supervisors." "A ratification is in effect, upon the act of the agent, equiva- "lent to the possession by him of a previous authority." * * * "A ratification can only be made when the party rati- "fying possesses the power to perform the act ratified." "The "Supervisors possessed no authority to make the subscription "or to issue the bonds in the first instance without the previ- "ous sanction of the qualified voters of the county." "The "Supervisors, in that particular, were the mere agents of the "county."

It is submitted that, if in the Fulton County case it had been held that the Supervisors had had, by virtue of the law authorizing them to manage and control railroad stock belonging to the county, power before the change was made to give a valid consent in behalf of the county to the substitution of the new stock for the old stock, and to accept the one instead of the other, they certainly had the power, after the change was made, to ratify the act of making the change, and upon the theory of the plaintiffs in this case, might have done so, and did so by ratifying the subscription and the issue of the bonds in that case. But the Court held in that case in effect that they had no such power. That ruling rested upon the *palpable fact* that, at the time the change in the nature and character of the stock was wrought by the accepted amendment to the charter of the Wabash & Mississippi R. R. Co., the County of Fulton had not become and was not a stock-

holder in that company; for if Fulton County had been a stockholder at the time the change was wrought, the county, as such stockholder, might have consented to the change, and the Board of Supervisors, having by law the control of railroad stock *belonging* to the county, would have had the power as the agents of the county to give the consent of the county to the change, and might have made a valid agreement to take one for the other. This was the point on which the question of the power hinged in that case. The application of that principle to this case demonstrates that the Board of Supervisors had no power to give the consent of the county to consolidation, and to agree to accept the new stock instead of the old, until the county had first become a stockholder. The act of the Supervisors in declaring their consent to the consolidation was of no effect and void.

Take an illustration: Suppose that A was simply the agent of C, with none but a special authority authorising him as the agent of C to contract conditionally with B for the purchase at a given price of one-half interest in a certain horse belonging to B, in case B before a given day should have his horse so trained as to be a good saddle horse, and with power to pay for that interest in the horse upon condition performed, and receive, keep and control such interest for C when so acquired; and suppose that such conditional contract were made by A as the agent of C: now, though B is still, by law, clothed with the power to contract, and so may exchange his horse with a stranger, still this contract, by necessary implication, contains an undertaking on his part that he will not do so. Suppose, in that case, and before the day for the consummation of the transaction, A should, at B's request, consent, as C's agent, that B should exchange his horse for another, and B should make

the exchange, could it be insisted for a moment that C by that transaction was bound to purchase one-half interest in the new horse, or that A had thereby acquired authority from C to make such a purchase for him? We think not. The only legal effect would be to rescind the whole contract.

Some confusion of thought results in the case at bar from a failure to distinguish properly between the effect of this consolidation upon the supposed contracting parties, and the effect upon the subject matter of the contract.

A railroad company having lawful authority to consolidate its stock and property with another, and having a subsisting contract with a stranger for the purchase of a tract of land for a given sum of money, may lawfully effect that consolidation, and thereby substitute the new corporation, formed by the consolidation, for the old, placing the new in the shoes of the old as a contracting party with the stranger as to the contract for the purchase of the land. The stranger has no right to complain of this, for he contracted originally in view of the lawful power of the corporation to so substitute its successor in its shoes as a contracting party. The rights of the stranger would be the same. He would have the same right to have his land bought, and to have the agreed price paid him for it, but he would be compelled to receive his money from the new corporation and to convey the land to the new corporation, because, having made his contract in view of the lawful authority of the original corporation to thus transfer its effects and substitute the new for the old, the stranger by his original contract in substance agreed that he would so deal with the new in lieu of the old corporation, if such change should be wrought by consolidation. The legal effect of the existing power of consolidation is merely to make the contract assignable, but not to

change the subject matter of the contract. But suppose by the original contract the stranger was to have as payment for his land, not a given amount of money, but a given amount of the stock of *the original company:* that contract, (though made in view of the lawful power of the corporation by consolidation to substitute (in its own hands and in the hands of its stockholders) the stock of a new corporation in lieu of the stock of the original corporation,) like the contract of B to sell one-half interest in his horse, contains, by necessary implication, an undertaking on the part of the original corporation that it will not exercise that power and exchange the old stock for the new, because it has contracted with the stranger to pay for the land a given amount *of old stock*. If, in violation of that contract, this original corporation should become so consolidated, and thus destroy the stock which it had agreed to give to the stranger for his land, the stranger would be released from his contract to sell his land, and could not be required to accept the new stock in payment for his land. Vary, then, the hypothesis: Suppose the contract between the stranger and the original corporation had been made on the part of the stranger by an agent under a special power of attorney, which specifically authorized him to contract to sell the land for a given amount of the original stock, and also authorized him *when said stock should be received* to manage and control it as agent for the stranger, and to take part in the management of the affairs of the corporation as proxy for the stranger, and, in the absence of his principal and before the sale of the land was consummated, and before the time for consummating it had arrived, and before he had received any stock for the stranger, this agent should, with no other powers, undertake for the stranger to consent to the proposed consolidation, and it should

take place, could it be urged that the stranger would thereby be bound to accept for his land the new stock and complete the sale? Would not the legal effect be simply the rescinding of the whole contract about the land?

The alleged consent of the supervisors in this case to the consolidation has, therefore, no legal effect or significance, and this case is thus, by the authority of the Clearwater case, thrown back upon the same legal basis of the Fulton county case, in 10th Wallace.

The result of the argument on this basis, then, depends upon the question whether at the time of the consolidation, on the 21st of October 1870, the county of Putnam had become and was a stockholder or shareholder in the Kankakee & Illinois River Railroad Co. That question we proceed to discuss.

WAS PUTNAM COUNTY A SHAREHOLDER OR MEMBER OF THE RAILROAD CORPORATION ON OR BEFORE THE 21ST OCTOBER 1870, ON THE HYPOTHESIS OF PLAINTIFF?

We answer, No. Some confusion has crept into the books on this subject, by reason that writers have failed in many cases to distinguish between the meaning of the word "subscriber" and the word "stockholder." This has come about from the fact that by the provisions of most charters the party who subscribes and pays a small installment on the stock subscribed thereby becomes entitled to the immediate possession of the stock—entitled to have a certificate of the stock—entitled to be enrolled on the stock register of stockholders, and entitled to vote at the meetings of the stockholders—and, in a word, is entitled to all the rights of a member of the corporation. Usually, therefore, a "subscriber" is a "stockholder," and the terms

in such case may be used one for the other and convey no wrong idea. It depends altogether, however, upon the provisions, either express or implied, of the articles of agreement which are subscribed whether such "subscriber" thereby becomes *ipso facto* a stockholder.

If, by the terms of the agreement subscribed, the corporation agrees in substance to let the subscriber have stock on a credit, and that he shall have his stock upon merely subscribing an agreement promising unconditionally to pay for it at a future time, in such case the mere fact that a party has so subscribed and the railroad company has accepted his unconditional subscription may make him in substance a member of the corporation.

Again, if by the articles of agreement the subscriber is to be entitled to his stock upon subscribing and paying an installment upon the stock, such promise to pay future installments with the installment already paid and accepted by the railroad company, entitles the subscriber to his stock at once, and he thereby becomes one of the corporation.

If by the articles subscribed the stock is all to be paid for at a future day, and the subcriber is only to receive his stock upon full payment, in such case full payment is necessary to give him the right to the position of stockholder, and the mere subscription does not make him a stockholder.

If the articles of agreement consist in a promise that the subscriber will at a future day take the stock and pay down for it upon receiving the stock, upon the performance of certain conditions to be performed by the corporation, in such case the subscriber does not become a stockholder until such condition has been performed, nor until the payment has been made; nor does the subscriber become liable to pay until the condition has

been performed; nor can he in any proper sense be regarded as a member of the corporation or a stockholder until the conditions are performed.

15 Ohio, 247, *Chamberlain* v. *P. & H.* R. R. *Co.*, where the Court say, in speaking of stock subscriptions upon conditions precedent: "Until such conditions precedent are complied with "the relation of the subscriber to the corporation *as a stock-"holder* does not arise."

10 Indiana, 244, *Evansville* R. R. *Co.* v. *Shearer*. This was a subscription for stock made by Shearer, "upon condition that "the road be permanently located on the east side of White "river, and Martinsburg be made a point." The Court said, "Such subscription did not make Shearer a stockholder."

In Pierce on American Railroad Law, pp. 70 and 71, it is laid down that "Parties making conditional subscriptions of "stock *are not to be considered stockholders* until the com-"pany has performed the condition on which the undertaking "depends."

The same doctrine is again declared in 10th Indiana, 339, in the case of *Jewett* v. *Lawrenceburg R. R. Co.* In that case the subscription for stock was "upon condition that the road "should be located within twenty rods of St. Omer." The Court held that "upon such a subscription the subscriber *is* "*not a stockholder* until the condition is performed."

The Supreme Court of Illinois has declared the law in the same manner in 38 Ill. 215, *Chase* v. *Sycamore, &c.*, R. R. *Co.*, where Justice Breese says: "We *do not understand* that a party, "by the mere act of subscribing stock, who has not paid for it or "any installment on it, who has received no certificate of "stock, * * * *can be regarded as a member* of the corpo-"ration, and more especially when his subscription is condi-"tional."

In 17th Barbour, 579, *Troy & Rut.* R. R. *Co.* v. *Kerr*, the Supreme Court of New York say: "A subscription may be "upon a condition precedent. If that is so here, the defendant "is not liable, nor could he properly be considered a shareholder "until the condition had been fulfilled."

The rule is, that no party can be regarded as a member of a corporation, unless such party either actually holds the stock or has subscribed for it on terms which entitle him to demand the stock without anything further being done on his part; or has subscribed or contracted for the stock and in view of the terms of his subscription or contract the corporation is in a situation to demand of him that he take the stock and pay for it, or some installment upon it, without anything further being done by the corporation.

In this case, therefore, on the hypothesis of the plaintiff in error, that there was a binding contract upon the county to take the stock and pay for it on certain conditions, still the county was not a stockholder on the 21st of October 1870, when the consolidation took place, because it is not even pretended, by the plaintiff in error, that any of the conditions had at that time been performed by the railroad company. It is alleged by the plaintiff that the railroad was "*located*," and that the required contract for iron, &c., was had before the *bonds were issued*, (as he says on the 29th of Nov. 1870,) but it is no where alleged that the road was even *located before the consolidation* on the 21st of October 1870, nor is it claimed that any contract for iron, &c., was *had at that time*, and it is not pretended that the railroad has ever been constructed within one-half mile of Hennepin. The county then was not, even on plaintiff's hypothesis, a member of the Kankakee & Illinois River R. R. Company at the time of the consolidation, and therefore was not a party to the act of

consolidation, and by the rule laid down in 10th Wallace, the Supervisors had no power after that to issue bonds for the stock of the new corporation, because that proceeding lacked the previous sanction of a vote of the majority of the legal voters of the county in favor of that proposition.

II.

The plaintiff's hypothesis is, however, not sustained by the record. The record does not show that on 21st of October 1870, at the time of the consolidation, there was any subscription or contract valid and binding upon the county to take that railroad stock—even conditionally. On the contrary, the pleadings, purporting to give all the facts and denying that there are any other facts, do show affirmatively that Putnam county never made any subscription whatever, conditional or otherwise, to the stock of the Kankakee & Illinois River R. R. Co., nor did the county ever make any agreement, conditional or otherwise, to so subscribe.

1. The vote of the people in favor of such subscription at the election on the 8th of February 1870, did not constitute a binding contract upon the county, even upon conditions, to take the stock and pay in bonds. To support this position we need only to refer to the decision of this Court in the case of *Aspinwall v. Commissioners of Daviess County*, volume 22 Howard's United States Reports, page 364, where the Court say, "a subscription was necessary to create a contract "binding on the county to take the stock and pay in bonds, and "on the railroad company to transfer the stock and receive the "bonds." See also 12th B. Monroe, 150, *The Cin. & Lex. R. R. Co. v. Kenton County*, wherein it is laid down that "the

"voters of the county are the principals and the County Court the "agent in the transaction. The vote was an expression of a willing- "ness on the part of the principals to take the stock, with an ex- "press direction to the agent to do so. As the agent failed to "do so the stock was not subscribed."

In the case of the *Waterford* R. R. *Co.* v. *Pidcock*, 8 Exchequer R. 279, it was held that one who had paid an installment upon certain stock, but did not sign the subscriber's agreement, was not bound by any contract to pay calls on the stock, although the stock was allotted to him on the stock books. This is a strong case and illustrates our next position.

The mere vote of the people, then, did not constitute any subscription or agreement, conditional or otherwise, binding upon the county.

2. The resolutions of March 15, 1870, (pages 82, 102 and 117) did *not* constitute a subscription, conditional or otherwise, or any agreement binding on the county, conditional or otherwise, to take stock.

That resolution declares "that *said subscription is hereby made*" in pursuance to the election, subject, &c., to certain conditions, &c.

In relation to this resolution we remark, first, that it is void upon its face. By the terms of the proposition voted upon on the 8th of February, this Board had no authority to do *anything* in relation to this proposed subscription, until said road should be "located and constructed through said county," and that upon the line prescribed. The contingency, upon the happening of which depended the power of the Board, on the face of the resolution confessedly had not happened. The Supervisors had no power to act at all until condition performed. No matter what act that Board may have done or

attempted to do, the act or effort was without authority and void, and the county was not affected or bound thereby. The county is only bound by the acts of the Board which are within the scope of their authority. The contingency had not happened, (even if we concede that "construction," as claimed by the learned counsel, was not a condition precedent,) for the resolution shows *on its face* that the road had not been *located*, at the time of the passage of this resolution. Even if this resolution would on its face constitute "a present subscription," it was void, because confessedly the condition precedent, on the happening of which the power could alone be exercised, had not occurred. Let it be observed, the power given by the vote is not to make a *conditional subscription*, but to make an absolute subscription, when the condition precedent shall have occurred. (Pp. 79, 99 and 116 Record.)

Again, (even if the terms of the vote authorized the making at once of *a* conditional subscription,) it did not authorize the making of *the* subscriptions indicated in that resolution. The vote authorized subscription only upon condition that "said railroad shall be located *and constructed*" through said county on a given line. (Pp. 78, 95, 113.) This resolution of March 15, 1870, declares for such subscription, upon condition that "said railroad shall be *located* in and through said county" on the given line, *entirely omitting* the *vital condition*, that said railroad shall be *constructed* as well as *located* on that line. This was a material departure from the power conferred by the vote. It was sanctioning a proposed subscription by the Supervisors, which had not been sanctioned by the voters. It is said that the condition as to "construction" could not be held to be a condition precedent. Some decisions of State Courts are produced to sustain that proposition. When close-

ly examined they are found to mean that the word "constructed" should not be construed to mean "completed" or "finished." The words in their connection import that "construction" (whatever that may mean) occupies the same position as the word "located" as to being a condition precedent. It is impossible, without doing violence to the plain language, to give them different positions in that regard, and we insist that, in the terms of the vote, the word "constructed" does import and mean that the railroad shall be "built." It may be that "construction" in that sentence may not include perfect completion; but it means that the railroad must first be put in such a situation that it may properly be said to be built or constructed. The word certainly means something, and was put there for a purpose. It certainly means something more than merely "located." It may be that it may not unfitly be held to mean, in connection with the word 'located,' that the road should be so far constructed as to show that the road was *permanently* "located." Railroad companies, after locating on one line, may lawfully re-locate and take another line, and it may be that this language "located and constructed" was placed there to require that before subscription should be made or become binding, or before the bonds should issue, the road should be "permanently located," not only to the satisfaction of the Supervisors, but that the permanency of the locating should be made manifest by an amount of "construction" which should be manifest to the eye, and which should render change and re-location impracticable. Mean what it may, we repeat it meant something, and something material.

It is suggested that "construction" could not be a condition precedent, because the object of the proposed issue of bonds was to aid in the construction. The answer to this is that the

declared purpose was to aid in the construction of the road from Bureau Junction to the east line of Illinois, and the court will take notice of the geographical fact that Putnam county is at the west end of the route, and if the road through that county had been constructed, the proposed bonds would aid in the construction of the balance of the road. This does not exclude the idea that construction of the road through Putnam county was a condition precedent as expressed.

The omission of that condition from the resolution of March 15th rendered that resolution void, for it was, in whatever sense it may be taken, wholly unauthorized by the vote.

This resolution varies from the terms of the previous vote of Feb. 8th, 1870, further in other respects; in this, that it adds a condition as to the procuring of the iron contract; and in this, that the supervisors provide that they shall have the control of the proceeds of the bonds, and that the proceeds shall be applied to construction through that county, under their control. This was a material modification of the thing voted for. True, the board declared their intention to do this before the election, but it was no part of the proposition voted upon at the election. The law gave the supervisors no power to raise money on county bonds, and with the proceeds embark in railroad building themselves. The only power they could have voted to them was to subscribe for stock and pay for it in bonds. (Record, 83.)

The case of *Bell* vs. *R. R. Co.*, 4 Wallace, 599, is a case in point, showing that the county authorities in such case have "no power to alter or modify a stock subscription voted by "the people, without power from the Legislature for that pur- "pose."

This resolution being an attempt by the supervisors to vary

and modify the proposed subscription voted by the people, the resolution itself was void.

The Supreme Court of Illinois, in the case of the *Tonica & Petersburg* R. R. *Co. vs. Stein*, 21 Ill. R. 98, decide that "authority to subscribe conditionally gives no authority to subscribe save upon the conditions specified in the authority. Under such a power an absolute subscription by an agent was void," holding that the principal "did not in such case subscribe at all." There was then in this resolution nothing which could bind the county, because it was not in pursuance of the power given by the vote at the election, but was at variance with the power in several material points.

We remark again, if the vote should be held to confer the power upon the board to make immediately a conditional subscription, still this resolution does not constitute "a subscription." A subscription is a manual act, and consists in subscribing a written contract agreeing to take a certain number of shares, and to pay for them, either absolutely or upon conditions. If the words of the resolution had been: "Resolved, that said subscription is hereby made, and said bonds are hereby issued," as well might it be said that by the passage of such a resolution the *bonds were actually* issued. I have read somewhere of a club in England, whose members had agreed among themselves that they would drink no grog until it rained. The rain was tardy; the members were blue and unsocial. As they sat silently under a clear sky, wishing for rain, an ingenious member offered a resolution: "Resolved, that it doth rain," and it was adopted unanimously. That might do in a club room for a joke, but will not do for the transaction of important business where the interests of others are involved.

In 25 Ill. 405, *Thasher* vs. *Pike Co.* R. R. *Co.*, the Supreme

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In 25 Ill. 405, *Thasher* vs. *Pike Co.* R. R. *Co.*, the Supreme

Court of Illinois held that "an undertaking to subscribe a given amount of stock when books should be opened, does not constitute a subscription."

In Carrick's case, 49 Eng. Chancery R. 509, it was held that "a mere agreement to become a stockholder did not constitute a contributor or one bound to pay for stock and take it.

There was, therefore, in fact no subscription made by the county by the resolution of March 15, 1870. At most this resolution can only be held to be a declaration of the willingness of the Board of Supervisors to make, on the books of the R. R. Co., or to some other written instrument, such a subscription as is therein indicated, without appointing an agent to make such subscription. The act which the Supervisors thus manifested their willingness to do, was never done.

Suppose, however, that waiving all these points, we assume for a moment that the resolution of March 15th, 1870, shall be construed as an authorized and valid offer made by the county to the railroad company, to make a contract with the railroad company, to take the stock and pay for it in bonds on the terms stated in the resolution. In that case we call the attention of the Court to the fact that on the 25th of June 1870, and before that offer had been accepted, this same Board of Supervisors retracted the offer by refusing to take the steps necessary to consummate the contract. On that day the Board spread upon its records a vote of its members, refusing to authorize their chairman to subscribe said stock on the books of the railroad company. (Pages 84, 104 and 119.) True, in the first plea it is admitted that on the 3d of June 1870 the R. R. Co. gave notice that it *did accept* said subscription *voted* by said county. This, the Court will see, made no contract, because the Board of Supervisors had never made an offer to make the subscription

voted for, but had offered, as is insisted by plaintiff in error, to make the subscription indicated by the resolution of March 15th, 1870; and we have already shown that the propositions were essentially different.

The case of Pidcock, in 8 Exchequer R. 279, is in point in showing the force and materiality of this position. There Pidcock asked to have allotted to him 100 shares. The corporation offered to allot to him 50 shares, upon his paying a deposit and signing the articles. He paid the deposit, and the shares were allotted to him on the books, but he did not sign the agreement. The court held that no bargain was made between the parties that he would pay for the shares, or any of them. The acceptance of the 3d of June, stated in the first plea, did not therefore constitute a binding contract.

The only other acceptance mentioned in the pleadings is found in the replications, wherein it is alleged that the acceptance was made before the consolidation, which was on 21st of Oct. 1870, and is not alleged to have been before the withdrawal of the offer, which occurred on June 25th, 1870. This pleading must be taken most strongly against the party pleading the fact, and therefore it must be taken that the acceptance mentioned in the replications was after the offer was withdrawn. (Pages 139, 143, 148.) The allegation of acceptance in each of the replications is void for uncertainty. The replications say, "said subscription * * had been accepted," &c. Now in each of the pleas two subscriptions are mentioned of the description in the replication—the subscription voted for by the voters, and the subscription spoken of in resolution of March 15th, 1870. These differ essentially, as we have shown. Which does the pleader allege was accepted and became a binding contract? They both could not, for they are

incompatible with each other. It may be said that the refusal to pass the resolution of June 25th, 1870, was not in form a withdrawal of the proposition. To that I reply, that if the Court depart from the letter of the resolution of March 15th, as to construe it into an offer made to the R. R. Co., by which the county was bound, the same latitude in search of the intention will construe the resolution of June 25th to accomplish what its spirit shows—that is, a withdrawal of such proposition or offer—intending not to have the county bound up until they could be sure the conditions would be complied with.

There are no other allegations in the record tending to show that on the 21st of October, 1870, (when consolidation took place,) the county of Putnam was a stockholder in the Kan. & Illinois River R. R. Co., or that tend to show that there was at that date any valid, binding contract upon the county to either subscribe for or take and pay for stock in that company, either conditionally or otherwise, and we have commented on all of them, and think we have shown from the allegations of the pleadings that both of those propositions are unsupported, and that the county on that day was not a stockholder, and was under no binding contract to become such.

The radical error, which runs through the brief and argument of the learned counsel for the plaintiff in error, consists in his having assumed that the county, at the time of the consolidation, was a stockholder in the original Illinois company, and he has reasoned very logically from that hypothesis, that being such stockholder, the stock belonging to the county was properly and lawfully merged in the consolidation, and that the county thereby became the owner of a like amount of stock in the new corporation, and was consequently bound to pay for the stock, and that being, as he assumes, a consenting stockholder, can not complain of the consolidation.

He assumes (to adopt his own language) that the question at bar is "a question of the *release* of a *subscriber* and *not*" (a question) "of a want of power to subscribe."

This error, we conceive, is the key to the whole case. He has produced many authorites bearing upon the relative rights between corporations and their stockholders, but they are not applicable to this case, for the county was never a stockholder, and indeed was never even a conditional subscriber.

It is thus shown that at the time of the consolidation the county had no stock in the original company, and the Supervisors had no lawful authority to take any such stock and issue bonds therefor; and upon the principles of the Fulton County case and the Clearwater-Meredith case (that stock being then and there destroyed by the consolidation) the Board of Supervisors could not lawfully afterwards take the stock of the new corporation, for the simple reason that that was not the same stock voted for, and the Board by law had no authority to take stock not voted for and issue bonds therefor. It follows that afterwards it was immaterial whether the conditions precedent mentioned in the original vote were subsequently performed or not, for after the subject matter of the power granted had been changed or destroyed, no subsequent performance of conditions could avail to give the Board power to accept and issue bonds for the new stock.

Thus far as to the power of the Supervisors to issue these bonds after consolidation. We now call the attention of the Court to the fact that, by the pleas, the Board of Supervisors did not, in fact, issue these bonds, but they were issued by the chairman of the Board and the County Clerk, without any lawful authority from the Board of Supervisors so to do. The pretended power is found, if at all, in 1st plea, 3d plea and

4th plea, and in replications to 1st plea, and in replications to 3d plea, and in replications to 4th plea. An examination of these pages and the several allegations there found will show that they are merely as follows:

1. That on March 15th, 1870, the Board of Supervisors, by the same resolution of that date by which they declared that "said subscription is hereby made," also resolved "that the clerk, under the seal of the County Court, shall execute in behalf of the county and issue said bonds to the Kan. & Ill. River R. R. Co. when they have complied with the terms hereinafter contained, and upon the written order of said committee, and then repeating the conditions in that resolution which we have above discussed. (83.)

2. That on the 20th of September, 1870, the Supervisors, by resolution, authorized and instructed their chairman to sign $25,000 bonds of the county and place them in the hands of the committee, to be, by the committee, delivered to the President, &c., of the Kankakee & Ill. River R. R. Co., in such amounts and at such times as may be necessary in constructing said railroad through Putnam County, *subject to all the conditions* upon which the subscription to the stock of said company was made, and upon the further *condition* that the proceeds of said bonds be expended in building said road through Putnam County. (85.)

3. That on 29th of Nov. 1870, a majority of the committee decided that all the conditions of said subscription had been complied with, and filed with the clerk a resolution, signed by two out of five of the committee, (being the chairman and clerk of the committee,) authorizing the clerk to sign the bonds and place them in the hands of the committee to be sold and appropriate the proceeds in accordance with the order of the Board of Supervisors.

Upon all this we say that the chairman and clerk did not thereby acquire lawful authority to issue the bonds in suit.

Remember, these bonds were issued after consolidation, and for the wrong stock, and the Board of Supervisors could not lawfully have issued the bonds, and therefore could not confer power to issue the same.

Again, the power to the clerk attempted to be given by the resolution of 15th of March, and to the chairman on Sept. 20th, 1870, in its terms, related to bonds to be delivered to the Kan. & Ill. River R. R. Co., and not to bonds to be issued to the Plymouth, Kan. & Pacific R. R. Co.

Again, the power to both the clerk and chairman was to be exercised only upon the happening of certain conditions. Those conditions had not then happened, and the Board could not lawfully delegate power (even if the Supervisors *themselves* possessed the power) to judge whether the conditions were complied with or not. In Angel and Ames on Corporations, 277, it is laid down that "authority of the Board of Supervisors" (in such case) "cannot be delegated."

In the case of *Lyon* v. *Jerome*, in 26 Wendell R. 486, the same doctrine is held, and the learned Judge says of the commissioner: "He may *act* by an agent. He must *judge* for himself."

Again, for the same reason the Board could not clothe the committee with authority to judge for the Board whether the conditions were or not complied with; their decision was therefore of no legal effect or significance.

Again, at the time of the issue of the bonds, the conditions had not, in fact, been complied with, for it is confessed by the filing of the replications that at the time of the issue of the bonds said railroad "was not located and constructed" on the

line prescribed, and that at that time "the *road-bed for said railroad* was not completed, and was *not even begun*," (page 122,) and the *Board of Supervisors* never did decide or declare that any of said conditions had been complied with.

Neither the clerk nor the chairman, nor the committee, could lawfully be clothed with power to substitute the new stock for the old, even if the Board had had power to do so—nor with power to decide whether any given condition had been performed.

Again, the Board of Supervisors never clothed or attempted to clothe with power the clerk, chairman and committee, or any one or more of them, to issue county bonds and sell the bonds and raise money, to be spent under the direction of the committee, or under the direction of the Board of Supervisors, in building railroads; and the Board of Supervisors had no lawful authority to confer any such power upon the clerk, chairman and committee, or even to have exercised such powers itself.

There is no law authorizing such proceeding, and there was no vote of the voters sanctioning such a proceeding; and yet this is the affair this Court is asked to endorse as valid and binding upon the county and its tax-payers.

Thus far we have discussed the questions presented as though the matters stated in the replications were properly before the Court, and as though every fact alleged therein was confessed by the demurrer. This is, however, not the legal aspect of this record. Each of the pleas in this case, designated 1st, 3d and 4th, is what the works on pleading call "a special traverse." It undertakes to admit all the facts which go towards making out the plaintiff's case, and denies the existence of any other facts tending to support the action, and

concludes to the country upon this last denial. This is a special traverse of everything alleged by plaintiff, or which he might prove in support of his action, other than what is admitted. This mode of pleading is not very usual, but is especially useful in cases where there is really no dispute about any of the facts, and thus presents the law questions for determination without the intervention of a jury. This mode of pleading is recognized by Chitty as proper in such cases, but is more elaborately discussed by Stephens in his work on pleading—pages 165 to 189—where its use, form and necessary elements are commented upon. To such a plea the adverse party must either demur or join the issue tendered. If the plea be good upon its face, he can only join the issue. If in fact the inducement in the plea does not state the whole case, the party joining the issue can prove the material matter not stated in the plea. But he *can not traverse* matter stated in the inducement in a good plea, nor can he confess and avoid any such matter set up in the plea, or allege in a special replication matter not set out in the plea, for this would be a traverse argumentatively of the special traverse under the *absque hoc*. Stephens' Pleading, page 189. Plaintiff ought to have demurred if my plea was not good, and ought to have joined the issue if my plea was not the truth, and the whole truth, as it alleges. Hence the allegations in the replications are not properly before the Court. The demurrers to the replications to the 1st plea are special, and set down special causes of demurrer. (Pages 172 to 175 Record.)

In the 1st plea there is no admission on the part of defendant of any acceptance of any of said supposed subscriptions. If plaintiff desired to show any such acceptance, the only proper mode open to him by the law of pleading was to join the issue.

the clerk and chairman of the Supervisors judge of the question whether these bonds are issued in pursuance of the orders of the Board? Those orders directed action upon the happening of conditions. These officers could not have delegated to them, except by statute, the authority to pass upon the question whether the conditions had happened or not. They had no authority to declare that the orders of the Board were authorized by the laws of the state.

The statement in the fourth plea on this subject is as follows: "And each of said bonds recites upon its face that it is issued "for a subscription of stock to the Kankakee & Illinois River "R. R. Company, and refers to the laws of the state and the "orders of the Board of Supervisors as the foundation thereof." (Page 123.)

What authority had these officers to recite, that the bonds were issued for a subscription to the stock of the original company, when no such subscription had ever been made, and when in fact the bonds were given for the stock of the new company?

Again, recitals to operate as estoppels must not be general, but must be definite and specific.

Herman's Law of Estoppel, page 251, Secs. 229, 230.

These recitals do not state as a specific fact that this road was located and constructed as required, or that the iron contract was procured. A general recital does not bind. Nor do they state that the subscription to the stock had actually been made, nor that it was made before the consolidation, nor even that its conditions had been complied with, while the recitals do refer to the orders of the Board generally, and they are shown to have been conditional.

In the case of *Kinnicutt* v. *Wayne Co. Supervisors*, decided

by this Court at the December Term 1872, Mr. Justice Hunt, delivering the opinion of the Court, says: "If any fact is re- "quired to authorize the issue of the bonds of a municipal cor- "poration, and * * * if *the existence of that fact* is by "law *to be ascertained and declared* by any * * * officer, "and *that officer* on behalf of the corporation executes and "issues the bonds, with a recital that * * * *the fact* * "* * has taken place, this will be sufficient evidence of the "fact to all *bona fide* holders of the bonds."

This is a clear statement of the true doctrine, and is a point which in many cases has unfortunately not always been so distinctly stated. The reverse of this proposition is true. Such recitals are of no force, *unless* the *officer issuing the bond* is by law *to ascertain and declare the fact.*

No man will pretend that the chairman of the Board of Supervisors and County Clerk could (in a county where no election had ever been called or held on the subject) issue county bonds, with recitals therein stating that the necessary election had been had, and thereby close the mouth of the county so that it could not be allowed to allege and prove that no election whatever had ever been called or held on the subject. Why not? Simply because such officers are not under such circumstances authorized to decide or declare anything whatever. But where there has been an election it has been held, from the very nature of the case, that the *county officers* "are by law to *ascertain and declare*" *how the majority voted.*

In such cases where the County Officers, in executing the bonds, put in the recital that the voters who voted for the subscription constituted a majority, it has been held that the County is thereby estopped, as against *bona fide* holder, to deny that such number did in fact make the required major-

ity, and this, upon the principle laid down by Mr. Justice Hunt, that these Officers were authorized by law to ascertain and declare the result.

An estoppel never results except from the act of a person or party *authorized by law to do the act.* To hold otherwise would, in the language of Mr. Justice Field, (in the Fulton county case, 10 Wallace,) "be equivalent to saying that an agent, not having the power to do a particular act for his principal, could give validity to such an act" by inserting a false recital as to a matter about which such agent had no authority from his principal to declare anything on the subject. A contrary doctrine would have put it in the power of County officers to issue bonds whenever they pleased without consulting the voters at all, and to thus have given validity to any such bonds, if in the hands of a *bona fide* holder. Suppose that some person claiming falsely to be my agent should execute, as my agent, a bond in my name with a false recital therein that I had, by a power under seal, authorized him to give such a bond for me, would any one contend that I would be bound by such false recital if sued upon such spurious bond in the hands of a *bona fide* purchaser? Certainly not, for the sole reason that such pretended agent had not authority by law to make for me the recital in question.

Another principle relating to estoppel by declarations is that the recital, admission or declaration which is relied upon as an estoppel must relate to some question *peculiarly* within the knowledge of the party by whom it is made, and of such a nature as to relieve the party relying upon it from further enquiry.

The County Officers had no authority to subscribe any stock to *any* R. R. Co. except "in case the said railroad shall be *lo-*

cated and *constructed* through or within one-half mile of Hennepin." The happening of this event is a condition precedent to the existence of the power of the County Officers to issue such bonds. This condition precedent, it is conceded by the pleadings, has not been performed. It is confessed by the pleadings that *no part* of *this railroad* has been *constructed* at all. But it is insisted that the County of Putnam is estopped from denying that said railroad has been constructed by the mere fact that her Officers have recited in the bonds that the bonds are "issued in accordance with law." To this we reply that the question whether "said railroad *was* or *was not so constructed* was not a question peculiarly within the knowledge of the County or of the County Officers. It is a question peculiarly within the knowledge of the Railroad Company, whose duty it was to so construct said road. The fact of such construction or non-construction was a physical fact, open to the observation of the holder of the bonds as much as the Officers of the County; and the very language of the Record order for the issue of the bonds shows that such railroad was not so constructed at the time the bonds were ordered or authorized to be issued. The fact of the construction or non-construction of said railroad as required by the terms of the election spread upon the Record was not a fact that the County Officers were "by law authorized to ascertain and declare," and surely was not a fact which the Clerk and Chairman (or either of them) were by law to ascertain and declare, and by their recitals they do not undertake to so declare.

These recitals then go for nothing, on the principle laid down by Mr. Justice Hunt, and the acknowledged principles of the law of estoppel.

These recitals were never ratified by the Board of Super-

visors. The Supervisors never saw these bonds until after this suit was begun. They paid coupons in the fall of 1871, and levied a tax (which was enjoined) to pay interest upon them, but the Record does not show that they ever knew anything about these recitals till after this suit was brought. A principal can never be held to have ratified an act of his supposed agent until the principal has *full* knowledge of the act ratified.

III.

It is said that plaintiff has rights as a *bona fide* holder of these bonds, which cut off our defense.

The opinion of this Court in the Fulton county case, delivered by Mr. Justice Field, and so copiously quoted in the opinion of the District Judge in this case, (page 82, record,) establishes the position, that if these bonds are void for want of power in the officers to execute them, the defense that the plaintiff is a *bona fide* holder cannot prevail. That doctrine was declared by this Court in "The Floyd acceptance cases."

But we go further in this case, and maintain that in this case, if there had been no consolidation, no change or substitution of other stock, still the county has a good defense upon the ground of condition precedent not performed, and that this defense is good against a *bona fide* holder of these bonds.

The validity, character and construction of all contracts depend upon the law of the state where such contracts are made at the time of their execution. It has been aptly said by many able jurists that contracts are to be treated as though the law were written out in full in the body of the contract, inasmuch as such law constitutes a part of the contract.

Before the 16th of April 1869 it had been adjudged by this Court that municipal bonds such as are involved in this suit were at common law in their nature commercial paper, in relation to which by the common law a *bona fide* holder was protected from many defenses which might be made to such bonds by the makers thereof as against the parties to whom they were originally delivered; and such, undoubtedly, was the law of the State of Illinois. It had also been held that *bona fide* purchasers had the right to rely upon the recitals of such bonds in some cases that the conditions thereof had been complied with.

On that day, however, the Legislature of the State of Illinois enacted a statute containing the following provision on the subject of such bonds, viz.:

"Any county * * * shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions "upon which such bonds, subscriptions or donations shall be made; and "such bonds, subscriptions or donations *shall not be valid and binding until* "*such conditions precedent shall have been complied with.*"

(See Session Laws of Ill. 1869, 716; Gross Statute, 556, Sec. 7.)

The State of Illinois had the power to enact this law. It was competent for the state to provide by statute that no kind of contract or paper made in Illinois after the passage of the statute should have the quality of commercial paper, and that the maker of any paper or contract whatever might set up any defense against a *bona fide* holder thereof which he might have made against the original holder.

By the passage of this statute of April 16th, 1869, bonds of this character made thereafter in the State of Illinois ceased to be commercial paper in their nature. They were no longer "payable at all events," but were to be valid only when the condition of the subscription should be complied with. This

statute also takes these bonds out of the rules laid down as to common law bonds in relation to recitals.

Experience had shown that the public were often defrauded by the procurement of municipal bonds from county officers by railroad companies (as in this case) before the conditions precedent had been complied with, and by the placing of such bonds in the hands of *bona fide* purchasers. To protect the public against this evil this statute was passed. It provides that "such bonds shall not be valid" until such conditions shall have been complied with. The provision is, not that the non-performance of the conditions may be set up as a defense by way of recoupment against the demand upon the bonds; but the provision is, that *until* such conditions have been complied with "such bonds shall *not be valid*." The bond has no validity or force, imposes no obligation upon the county, until condition performed. It does not become a subsisting demand, capable of being transferred, until condition performed. It is of no effect and void until condition performed. It is in the same condition as to validity as bonds executed by a pretended agent having no authority to so execute; and, like such, it acquires no validity by passing into the hands of a *bona fide* purchaser.

In construing a statute the Courts look at the object of the statute, and the evil to be provided against, or the good to be accomplished by the law. Of what practical effect would that statute be should the Courts hold such bonds valid in the hands of a *bona fide* purchaser, when the law says they shall not be valid, and makes no qualification or exception to this enactment? Such bonds are universally put upon the market, and it would accomplish no protection to merely hold that such bonds should not be valid while in the hands of the railroad company.

What protection would this statute give if any county officer might conclude the county by recitals in the bond that the conditions had been performed, when in fact they had not? The language of the statute is peculiar, and goes to the bottom of the validity of such a bond, no matter where found. Of what avail would this statute be if, as is contended, the Board of Supervisors had the power to waive the performance of some of the conditions?

Plaintiff in this case is not a *bona fide* holder, but had constructive notice of the *defects* of all these bonds, not of irregularities in their issue, but of utter want of power to execute the bonds. He denies notice generally in his replication, but does not deny the facts which constitute notice. His denial is not one of fact, but of the legal effect of the facts.

The bonds on their face showed that they purported to be issued for a stock subscription to a railroad company. This gave him notice of all the public laws of Illinois. The bonds referred to the public record of the proceedings of the Board of Supervisors for the orders on which the supposed subscription and bonds were made. Those records showed that if any subscription was made, it was conditional, and he was bound to take notice of the statute of April 16, 1869, as to the validity of bonds in such cases. He was bound to take notice of the public files of the Secretary of State of the State of Illinois, and therefore had notice of the consolidation, and knew that the Kankakee & Ill. River R. R. had ceased to be on Oct. 21st, 1869. The public statute authorizing consolidation provided that consolidation could only be effected by filing with the Secretary of State the articles of consolidation, which thus became the charter of the new corporation. The charter of the

Illinois Company did not authorize consolidation, but simply provided for making running arrangements with other companies.] The date of the bond would have shown that the bonds were issued after that company's stock had ceased to be; and the palpable physical condition of things at Hennepin would have shown him that said railroad was not located and constructed as the condition required, for the road-bed, by the pleadings, was not even begun. This was a fact of such nature that no officer was by law to ascertain and declare it. It was like the actual possession of real estate, of which all men dealing in relation thereto are bound by law to take notice; and he was put upon enquiry by the nature of the transaction. In the language of Justice Field, in the Fulton county case, he was bound to look "to the action of the county officers, and ascer-"tain whether the law had been so far followed by them as to "justify the issue of the bonds," and give them validity.

T. Lyle Dickey,

For Defendant in Error.